



TITLE 3

REVENUE & FINANCE

Thorne Bay Municipal Code

CODIFIED NOVEMBER 2021

TITLE 3 - REVENUE AND FINANCE:

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CHAPTER 3.04 - FISCAL POLICIES**3.04.010 BUDGET AND CONSTRUCTION PROGRAM.**

- A. The mayor shall arrange for the preparation of a budget and construction program. The budget and construction spending proposals shall be submitted as an ordinance.
- B. After public hearing, the council may approve budgets with or without amendments and shall appropriate the funds required. (Prior code Ch. 28 § 1)

3.04.020 CITY OBLIGATIONS.

- A. A bond, contract, lease or other obligation requiring the payment of funds from the appropriations of a later fiscal year or of more than one fiscal year shall be made by ordinance and approved by the voters.
- B. The council may make supplemental and emergency appropriations. No payment may be authorized or made, and no obligation incurred unless an appropriation has been made by ordinance.
- C. The council may authorize contracts for construction improvements to be financed wholly or partly by the issuance of bonds. (Prior code Ch. 28 § 2)

3.04.030 FISCAL YEAR.

The fiscal year of the municipality shall begin on the first day of July and end on the last day of June in the calendar year. (Ord. 87-11, 1987: prior code Ch. 28 § 3)

3.04.040 FUNDS DESIGNATED.

Funds designated for the city:

- A. General fund;
- B. Federal revenue sharing fund;
- C. State revenue sharing fund;
- D. Construction project fund;
- E. Debt retirement fund;
- F. Enterprise fund;

Other funds which may be created as needed by resolution of the city council. (Ord. 89-03 §4,1989: prior code Ch. 28 § 4)

3.04.050 AUDIT OF CITY GOVERNMENT ACCOUNTS.

Prior to the end of each fiscal year the council shall designate a qualified individual who, as of the end of the fiscal year, shall make an independent audit or financial statement. Such person shall have no personal interest, direct or indirect, in the financial affairs of the city or of any of its officers. (Prior code Ch. 28 § 5)

3.04.060 – GAMING ACCOUNT, DISPOSITION OF NET PROCEEDS UPON DISSOLUTION OF ORGANIZATION.

Upon dissolution, any remaining net proceeds from gaming activity under AS 05.15 will be distributed to one or more existing permittees, other than a multiple-beneficiary permittee, in accordance with 15 AAC 160.020(a)(5). (Ord. 17-07-18-03)

CHAPTER 3.08 - BUDGET SECTIONS:**3.08.010 SCOPE OF BUDGET.**

- A. The budget shall be a complete financial plan for all the operations of the municipality, showing dollar reserves, anticipated revenues, and proposed expenditures.
- B. The budget shall include a comparative statement of projected actual expenditures and projected actual revenues for the preceding year and the budgeted current fiscal year.
- C. Proposed operating expenditures shall not exceed total anticipated revenues. Capital expenditures shall not exceed anticipated revenues and cash reserves. (Ord. 88-42 § 1,1988; prior code Ch. 30 § 1)

3.08.020 ANTICIPATED REVENUES-DESIGNATED.

- A. Anticipated revenues shall be composed of taxes, licenses and permits, intergovernmental revenue, charges for services, fines and forfeits and, miscellaneous revenue.
- B. Cash reserves shall be composed of prior revenue carryover and reserves.

3.08.030 ANTICIPATED REVENUES-COMPARISON TO PREVIOUS YEARS.

In the anticipated column opposite the items of anticipated revenues there shall be placed the projected amount of each such item actually received in the preceding year. (Ord. 88-42 § 3, 1988: prior code Ch. 30 § 3)

3.08.040 PROPOSED EXPENDITURES-DESIGNATED.

Proposed expenditures shall be itemized. Separate provisions shall be included in the budget for at least:

- A. Interest, amortization of principal and redemption charges on the public debt for which the faith and credit of the municipality is pledged;
- B. Administration, operation and maintenance of each office, department or agency of the municipality;
- C. Council's budgetary reserve;
- D. Expenditures proposed for construction projects including provisions for down payments on capital projects. (Prior code Ch. 30 § 4)

3.08.050 PROPOSED EXPENDITURES-COMPARISON TO PREVIOUS YEARS.

In a parallel column opposite the several items of proposed expenditures there shall be placed the projected amount of each such item actually spent in the preceding fiscal year and the budget for the current fiscal year. (Ord. 88-42 § 5, 1988; prior code Ch. 30 § 5)

3.08.060 BUDGET SUMMARY.

At the head of the budget there shall appear a summary of the budget, which need not be itemized. Principal sources of anticipated revenues, and kinds of expenditures by department, shall be stated in such a manner as to present to the taxpayers a simple and clear summary of the detailed estimates of the budget. (Prior code Ch. 30 § 6)

3.08.070 BUDGET TO BE PUBLIC RECORD.

The budget, the budget message, the construction improvement program, and all supporting schedules shall be a public record in the office of the clerk, open to public inspection by anyone. The mayor, or the mayor' designee shall cause to be prepared for distribution to interested persons, copies of the budget and budget message. (Prior code Ch. 31 § 1)

3.08.080 PUBLIC HEARING-NOTICE.

The council shall determine the place and time of the public hearing on the budget and shall post such notice in three places in the city. The council shall include in the notice a summary of the budget and capital improvement program and a statement setting out the time and place for a public hearing. (Prior code Ch. 31 § 2)

3.08.090 PUBLIC HEARING-REQUIRED.

At the time and place so advertised, the council shall hold a public hearing on the budget as submitted, at which all interested persons shall be given an opportunity to be heard, for or against the estimates or any item thereof. (Prior code Ch. 31 § 3)

3.08.100 AMENDMENT RESTRICTIONS.

After the conclusion of such public hearing, the council may insert new items or may increase or decrease the items of the budget, except items in proposed expenditures fixed by law. The council may not vary the titles, descriptions or conditions of administration specified in the budget. (Prior code Ch. 31 § 4)

3.08.110 ADOPTION-VOTE REQUIRED.

The budget shall be adopted by favorable votes of at least a majority of all the members of the council, no later than the last meeting in June. (Ord. 87-13, 1987: prior code Ch. 31 § 5)(Ord. 13-04-16-01)

3.08.120 EFFECTIVE DATE-CERTIFICATION.

Upon adoption of the budget, the budget shall be in effect for the fiscal year. A copy of the budget, as finally adopted, shall be certified by the mayor and the clerk and filed in the office of the clerk. The budget so certified shall be printed, mimeographed or otherwise reproduced, and sufficient copies shall be made available for the use of all officers, departments and agencies and for interested persons and civic organizations through the clerk's office. (Prior code Ch. 31 § 6)

CHAPTER 3.12 - PURCHASING SECTIONS:**3.12.010 PURCHASING AGENT-CREATED.**

- A. There will be a purchasing agent for the city to make all purchases of supplies, materials, equipment, and contractual services for the offices, departments and agencies of the city.
- B. The mayor or his/her designee will be the city purchasing agent. (Ord. 85-01-17-02 § 1, 1985)

3.12.020 PURCHASING AGENT-AUTHORITY.

- A. The purchasing agent will have the authority and it shall be his/ her responsibility to purchase or contract for supplies, materials, equipment, and contractual services needed by any using office, department or agency of the city and to sell surplus or obsolete personal property of such using office, department or agency in accordance with the ordinances of the city and such rules and regulations as shall be prescribed by the mayor and approved by the city council.
- B. The purchasing agent will have the authority to join with other units of government in cooperative purchasing ventures when the best interests of the city would be served thereby, and same is in accordance with the city and state laws.
- C. The purchasing agent shall have bond to the municipality in a sum which the council directs. (Ord. 98-07 §§ 3(part), 4(part), 1998: Ord. 85-01-17-02 § 2, 1985)

3.12.030 PURCHASING AGENT-POWERS AND DUTIES.

The purchasing agent will:

- A. Minimum Expenditure. Act to procure for the city, the highest quality in supplies and contractual services at the least expense to the city;
- B. Rules and Regulations. Recommend to the city council the establishment, and amendment when necessary, of all rules and regulations pertaining to purchasing;
- C. Purchasing Analysis. Keep informed of current developments in the field of purchasing, prices, market conditions and new products, and secure for the city the benefits of research done in the field of purchasing by other governmental jurisdictions, national recognition, and by private businesses and organizations;
- D. Forms. Prescribe and maintain such forms as he/she may find reasonably necessary;
- E. Tax Exemptions. Act so as to procure for the city all state and federal tax exemptions to which it is entitled. (Ord. 85-01-17-02 § 3, 1985)

3.12.040 INSPECTION AND TESTING.

- A. The purchasing agent will 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.
- B. Inspection by Using Agency. The purchasing agent will have the authority to authorize using agencies having the staff and facilities for adequate inspection to inspect all deliveries made to such agencies under rules and regulations which the agent will prescribe.
- C. Tests. The purchasing agent will have the authority to require chemical and physical tests of samples submitted with bids and samples of deliveries which are necessary to determine their quality and conformance with the specifications. In the performance of such tests, the purchasing agent will have the authority to make use of laboratory facilities of any agency of the city government or other laboratory that may be available. (Ord. 85-01- 17-02 § 4, 1985)

3.12.050 MAYOR-AUTHORITY.

The mayor or his/her designee may transfer supplies, materials, and equipment to or between offices, agencies or departments. (Ord. 98-07 §§ 3(part), 4(part), 1998: Ord. 85-01-17-02 § 5, 1985)

3.12.060 PUBLIC IMPROVEMENT CONTRACTS.

Except as provided in this chapter, contracts for public improvements for any amount estimated to exceed ten thousand dollars shall be by competitive sealed bid and be awarded to the lowest responsible bidder. (Ord. 98-07 §§ 3(part), 4(part), 1998: Ord. 85-01-17-02 § 6, 1985)

3.12.070 PRIOR COUNCIL APPROVAL-REQUIRED WHEN.

Every contract for, or purchase of, supplies, materials, equipment or contractual services for more than two thousand dollars (excluding day-to-day city operational expenses such as utilities, insurances, payroll, etc.) will require the prior approval of the city council; and under no circumstances may such contracts or purchase be made without first obtaining the approval of the council.

- A. Any proposed project exceeding Ten thousand dollars (\$10,000.00) being presented to the City Council must answer the following questions:
 - 1. What is the proposed project, objectives, cost and location?

2. What is the reason for the project being proposed (e.g., health, safety, public and resident access, financial, housing or Real Estate development, harbor development or other needs)?
3. What would it mean not to meet the need for the project action?
4. What other actions would meet the same need, and/or are there other firms that could supply the needed service for a lower cost?
5. What would be the consequence of the project in terms of adverse effects?
6. If there are possible adverse effects, what can be done to lessen these effects? This question must answer if the costs of mitigation are built into the project.
7. If there are ways to alleviate adverse effects, who will be responsible for this mitigation?

These questions shall be answered in writing in two pages, or less by the employee, or person, or entity, proposing any action that requires city funds, or administration of City funds, or funds granted to the City by the State, Federal Governments. The public may comment on these answers during any council consideration of projects. The City Council may forego these questions for projects deemed needed in emergencies (i.g., utility failures washed out roads, or disasters, or other events the Council deems an emergency). (Ord. 93-26 § 3, 1993; Ord. 85-01-17-02 § 7, 1985)

3.12.080 ESTIMATES.

- A. All offices, departments or agencies of the city that use supplies will, either by or with authorization of the department head under which the using office, department or agency operates, file with the purchasing agent estimates of their requirements for supplies, materials, equipment and contractual services in such a manner, at such times, and for such future periods as the purchasing agent will prescribe.
- B. Unforeseen Requirements. A using office, department or agency will not be prevented from filing, in the same manner, with the purchasing agent at any time an estimate for any supplies, materials, equipment and contractual services, the need for which was not foreseen when the detailed estimates were filed.
- C. Revisory Power in Agent. The purchasing agent will examine each estimate and shall have the authority to revise the estimate as to quantity, quality or estimated cost. (Ord. 98-07 §§ 3(part), 4(part), 1998; Ord. 85-01-17-02 § 8, 1985)

3.12.090 CONTRACTS OVER TEN THOUSAND DOLLARS.

Unless otherwise prohibited or exempted by the ordinances of the city, all contracts and purchases for any amount estimated to exceed ten thousand dollars shall be by competitive sealed bid. (Ord. 85-01-17-02 § 9, 1985)

3.12.100 BIDS-NOTICE.

- A. Newspaper. Notice inviting competitive sealed bids will be published once in a newspaper of general circulation published in the city and by posting in at least three separate places in the city, at least fourteen days preceding the last day set for the receipt of bids. The notice required therein will include a general description of the work, or materials or service, will state where bid forms and specifications may be secured, the closing time for submission of bids and place of submission and the time and place of opening of bids. Bid deposits if they are required will be prescribed in the public notices inviting the bids.
- B. Bidder List. The city will also invite sealed bids from all responsible prospective contractors who have requested that their names be added to a bidder list, which the city shall maintain, by sending them a copy of such notice or such other notice as will acquaint them with the proposed contract. In any case, invitations sent to the contractors on the bidders list will be limited to work that is similar in character and ordinarily performed by the contractors to which the invitations are sent. Failure of any person on the bidders list to receive such invitation to bid shall not invalidate the bidding procedures. (Ord. 85-01-17-02 § 10, 1985)

3.12.110 CONTRACT DOCUMENTS-CHANGES AND ADDENDA.

No official or officer, and the bid documents will so state, shall make any oral interpretations which may affect the substance of the contract documents. Addenda will be issued when questions arise which might affect the bids. The purchasing agent will be certain that all bidders receive the addenda which should be delivered by certified mail with a return receipt requested, by telegram, or by hand delivery. When delivered by hand, receipt of the addenda should be obtained. When an addendum is issued less than four working days before the time for receipt of bids the addendum will contain a new bid date which will be at least four working days after the normal receipt of the addendum by the prospective bidder. Receipt of addenda will be acknowledged as part of the bid submitted. (Ord. 85-01-17-02 § 11, 1985)

3.12.120 PRE-BID CONFERENCE.

All department heads or the purchasing agent may provide for a Pre-bid conference at least seven days prior to the time for submission of bids or upon the request of any bidder. All points of clarifications and questions answered at the conference which may affect the bid will be issued in the form of addenda. (Ord. 85-01-17-02 § 12, 1985)

3.12.130 BIDS-OPENING PROCEDURE.

- A. Submitting. Sealed bids will be submitted personally or by mail to the officer designated in the notice inviting bids and will be identified as bids on the outside of the envelope.
- B. Opening. Bids will be opened in public at the times and place so stated in the public notices which will be immediately after the closing time for submission of the bids. Any bidder may review all bids immediately after opening and prior to tabulation or summary.
- C. Tabulation. A tabulation of all bids received will be forwarded to the council by the purchasing agent with appropriate recommendations for acceptance or rejection of bids. A copy of the tabulation will be furnished to each bidder. (Ord. 85-01-17-02 § 13, 1985)

3.12.140 BIDS-REJECTION.

- A. Upon receipt of the bids, the city council or its delegate will have the authority to:
 - 1. Reject defective or nonresponsive bids;
 - 2. Reject all bids;
 - 3. Negotiate with the three lowest responsible bidders, if bid prices are in excess of the money available;
 - 4. Re-advertise the project for bidding, after making substantial changes in the project plans to bring the cost within the limit of money available.
- B. Negotiation. If the lowest and best bid exceeds the budgeted amount and the city council does not make additional funds available, the proposed contract for purchase or sale or for services or for construction projects will be reduced in scope sufficiently to bring the estimate of cost within the funds available. (Ord. 85-01-17-02 § 14, 1985)

3.12.150 BIDS-WAIVER OF IRREGULARITIES.

The city council will have the authority to waive any and all irregularities on any or all bids. (Ord. 85-01-17-02 § 15, 1985)

3.12.160 AWARD OF CONTRACT.

- A. Lowest Responsible Bidder. Contracts will be awarded to the lowest responsible bidder. In determining the lowest responsible bidder, in addition to price, there will be considered:
1. The ability, capacity and skill of the bidder to perform the contract;
 2. Whether the bidder can perform the contract within the time specified, without delay or interference;
 3. The quality of performance of previous contracts;
 4. The previous and existing compliance by the bidder with laws and ordinances relating to the contract;
 5. Sufficiency of the financial resources and ability of the bidder to perform the contract;
 6. If some bids are approximately equal, preference may be given to local bidders, if the cost differential is less than ten percent between the parties. For the purpose of this chapter, "local bidder" shall be defined as a bidder who:
 - i. Has a current state business license;
 - ii. Submits a bid under the name that appears on the current state business license;
 - iii. Maintains a business within the boundary of the city ninety days immediately preceding the date of the bid;
 - iv. Is not delinquent in the payment of taxes, charges, assessments owing to the city on the account of the business making the bid.
 7. The city council may require such document or verification by the person claiming to be a local bidder as deemed necessary to establish the requirements as in this section.
- B. Award to Other than Low Bidder. When the award is given to other than the lowest bidder, A full and complete written statement of the reasons therefor will be delivered to the unsuccessful low bidder or bidders and filed with the other papers relating to the transaction. The minutes of the city council meeting relating to the matter may be used as the required written statement.
- C. Award to Delinquent Contractor. The city shall not make an award under this section to a contractor who is delinquent in the payment of taxes, charges, assessments or fees owed to the city by the contractor's business, unless the contractor immediately brings all overdue accounts current or authorizes the city to deduct the delinquent amount, plus any late fees or interest from the amount.

(Ord. 02-03-21-01 § 3, 2002; Ord. 98-07 §§ 3(part), 4(part), 1998; Ord. 89-05 § 4(part), 1989; Ord. 85-01-17-02 § 16, 1985)

3.12.170 SEALED BIDDING-SUBMISSION-EXCEPTIONS.

The restrictions and provisions of this chapter do not apply:

- A. To contracts involving the obtaining of professional or specialized services such as, but not limited to, services rendered by architects, attorneys, engineers, appraisers, surveyors, accountants and other specialized consultants;
- B. Where calling for bids on a competitive basis is unavailing and impossible, including but not limited to situations where rates are set by statute or ordinance or where like items are traded in, or where used items are being purchased;
- C. Where the city's requirements can be met solely by an article or process obtainable only from a single source;
- D. To placement of insurance coverage;
- E. When public work is performed by the city with its own employees;
- F. When it is advantageous to the city to enter into a contract with a bidder for the same supplies or services such bidder is providing another Alaskan local government, the state of Alaska, or the United States where such supplies and services are being provided the other governmental unit on the basis of formal bids submitted, and where the city contract is on substantially the same terms and those bid; or the contract is with or through such other governmental unit so that the benefit of the responsible bid accrues to the city;
- G. To contracts primarily involving the purchasing of supplies, materials, equipment, or contractual services using state or federal grants when the grant funds are being spent by a state or federal agency pursuant to that state or federal agency's procurement rules and regulations;
- H. When either competitive procedure has been followed, but no bids or quotations are received. In such a case, the purchasing agent may proceed to have the services performed or the supplies purchased without further competitive bidding or quotation;
- I. When supplies, materials, equipment or contractual services are purchased from another unit of government at a price deemed below that obtainable from private dealers, including war surplus;
- J. When contractual services are purchased from a public utility corporation at a price or rate determined by state or other government authority; and
- K. When the city council determines that the public interest would be best served by the purchase of used equipment and, by resolution, authorizes the purchasing agent to locate and purchase a particular type and quantity of used equipment. (Ord. 98-07 §§ 3(part), 4(part), 1998: Ord. 85-01-17-02 § 17, 1985)

3.12.180 CONTRACTS OF THREE HUNDRED DOLLARS OR LESS.

Purchases of supplies, materials, equipment and contractual services where the actual cost, excluding freight, is three hundred dollars or less may be made on the open market without competitive bidding or quotations. (Ord. 98-07 §§ 3(part), 4(part), 1998: Ord. 85-01-17-02 § 18, 1985)

3.12.190 CONTRACTS BETWEEN THREE HUNDRED AND TEN THOUSAND DOLLARS.

- A. All purchases of supplies, materials, equipment and contractual services of a total estimated value of more than three hundred dollars and less than ten thousand dollars may be made in the open market without newspaper advertisement but otherwise observing the procedure prescribed by this chapter for formal purchasing and sale procedures.
- B. Minimum Number of Bids. All open market purchases or sales will whenever possible, be based on at least three competitive bids and will be awarded to the lowest responsible bidder in accordance with the standards set forth in Sections 3.12.090 and 3.12.170.
- C. Invitation to Bid. The purchasing agent may solicit either oral or written bids for open market purchases or sales.
- D. Public Record. The purchasing agent will keep a record of all open market bids submitted in competition thereon; and such records will also be open to public inspection. (Ord. 98-07 §§ 3(part), 4(part), 1998; Ord. 85-01-17-02 § 19, 1985)

3.12.200 INSURANCE POLICIES.

- A. The city will purchase policies of insurance following the open market procedures provided in this chapter.
- B. Open market procedures will not be required for a policy that:
 - 1. Has an annual premium or charge less than three hundred dollars;
 - 2. Provides liability coverage for a single event;
 - 3. Is for property title insurance;
 - 4. Has its premium or charge fixed by state statute;
 - 5. Is health, life, or disability insurance procured by the city for the benefit of city employees, their spouses or dependents made available to the city as a political subdivision of the state; or;
 - 6. Is provided through a joint insurance arrangement as set forth in AS 21.76.
- C. Open market procedures are not required for a change in policies in effect, or to acquire policies supplemental to an existing policy if the policies in effect cannot be changed; provided the change or supplemental policies are approved by the council. (Ord. 98-07 §§ 3(part), 4(part), 1998: Ord. 85-01-17-02 § 20, 1985)

3.12.210 SUBDIVISION PROHIBITED.

No project or contract specifications will be subdivided to avoid the requirements of this chapter. This provision will not apply in the event that a funding source is located by the city which will pay a portion of an overall project; in that event, the portion that is being paid from a separate source may be deducted from an overall project or contract. (Ord. 85-01-17-02 § 21, 1985)

3.12.220 EMERGENCY CONTRACTS.

Whenever, because of an emergency, it is deemed necessary and in the public interest by the mayor to enter into any contract for the purchase of supplies, materials, equipment, or contractual services without following the competitive bidding procedures required by this chapter, or without obtaining council approval as required in Section 3.12.070, the mayor will authorize such emergency contract if the estimated sum involved is less than ten thousand dollars. If the estimated contract sum involved is greater than ten thousand dollars the mayor will refer any proposed emergency contract to the council for its approval and authorization to waive the competitive bid procedures. (Ord. 98-07 §§ 3(part), 4(part), 1998; Ord. 85-01-17-02 § 22, 1985)

3.12.230 ENCUMBRANCE OF FUNDS.

Except in cases of emergency declared by the mayor or the council, as provided in this chapter, no contract or any change order to an existing contract will be authorized unless there is a sufficient unencumbered balance in the budget appropriation of the using agency or sufficient bond funds available, in excess of actual expenditures or commitments, to cover such contract or change order. (Ord. 85-01-17-02 § 23, 1985)

3.12.240 BILLING-PAYMENT CERTIFICATION.

- A. The city administrator, or his/her designee, shall certify all bills for payment.
- B. The city administrator, or his/her designee, will ensure that such payments are fiscally regular, legal, and within budgetary constraints. (Ord. 98-07 §§ 3(part), 4(part), 1998; Ord. 85-01-17-02 § 24, 1985)

CHAPTER 3.15 - SHORT TERM INVESTMENT POLICY**3.15.010- INVESTMENT OF OPERATING FUNDS;**

Objective. There are opportunities from time to time for the city to invest surplus operating funds. Such funds are generally short-term in nature and are often restricted as to their use. Safety of principal is the foremost investment objective of the City of Thorne Bay. Each investment transaction shall seek to first ensure that capital losses are avoided, whether they are from securities defaults or erosion of market value. The City of Thorne Bay seeks to attain market rates of return on its investments, consistent with constraints imposed by its safety objectives and cash flow considerations that restrict placement of public funds. All participants in the investment process shall seek to act responsibly as custodians of the public trust. Investment officials shall avoid any transaction that might impair public confidence in the City of Thorne Bay.

3.15.020-TREASURY MANAGEMENT.

The responsibility for conducting investment transactions resides with the mayor and city administrator. The mayor and the city administrator shall not deposit funds in any depository that is not a member of the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA) or the Securities Investor Protection Corporation (SIPC). Investments shall be made with judgment and care – under circumstances then prevailing – which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.

3.15.030-PERMISSIBLE INVESTMENTS.

- A. Operating funds of the City of Thorne Bay may be invested in:
1. Federally insured or fully collateralized certificates of deposit of banks and credit unions maturing within two years;
 2. U.S. Government Treasury, agency and instrumentality securities;
 3. Notes or bonds issued by the state of Alaska or its political subdivisions or other states of the United States, maturing within two years, with a credit rating of A-/A3 or better from two national ratings agencies, maturing within two years;

4. Repurchase agreements collateralized by U.S. Treasury securities and marked to market. If repurchase agreements are overnight investments or if securities are collateralized in excess of 102 percent, marked to market is not necessary;
 5. A state investment pool formed within the state of Alaska and comprised of agencies of the state and/or its political subdivisions;
 6. Money market mutual funds whose portfolios consist entirely of U.S. Government securities.
- B. Sales tax proceeds allocated for community development may be invested in:
1. Helping Businesses expand or conduct emergency repairs associated with essential services;
 2. Investment rate determined by certificate of deposit interest rates offered by the city's investment broker on terms consistent with certificate of deposits'
 3. Essential services include the supply of; boat or vehicle fuel, air service, mail service, heating fuel, propane, electricity, food or other essential services approved by the City Council. (Ord. 17-04-18-01)

CHAPTER 3.17 - CONSUMER'S SALES TAX**3.17.010 DEFINITIONS.**

For the purposes of this chapter, the following words and phrases have the meanings respectively ascribed to them:

- A. **"Buyer" or "consumer"** means and includes, without limitation on the generality of the terms, every individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, business trust, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise.
- B. **"Delivery"** means that goods have been placed within the buyer's control.
- C. **"Lease"** means a contract permitting the use or occupancy of real or personal property for consideration.
- D. **"Other Lease Types"** means any lease that is not a capital lease.
- E. **"Remuneration for services"** means and includes the gross remuneration received for furnishing labor and materials for accomplishing a specified result, including travel and adventure services, and rentals of all types, including but not limited to rentals of equipment, buildings, lands and materials. It shall not be construed to include salaries or wages received by an employee from an employer.
- F. **"Rental"** means any transfer of the right to use or occupy property for consideration.
- G. **"Residential Rentals"** means rental of a dwelling designed for living or sleeping purposes.
- H. **"Retail sale" or "sale at retail"** means any nonexempt sale of services, rentals, or tangible personal property made to a buyer who intends to use, consume, or receive the item or services purchased for his own personal use as the ultimate consumer with no intention to sell the item again, whether to be sold in the same form as received, or in the same modified condition or after fabrication or use with some other substance or item. Notwithstanding any other provision of this chapter, arrangements made with another person or agent, including, but not limited to, a travel agent, broker, representative, tour operator, tour marketer, or cruise ship line, by a provider of services, rentals or goods to market such services, rentals, or goods, (including travel and adventure services) or to provide such services, rentals or goods to another person, or the transfer to the buyer of the right or privilege to receive or assign such services, rentals or goods, is a taxable sale by such provider, and such provider is a seller for purposes of this chapter. The point of delivery of services, rentals, or tangible property is the point at which the sale is deemed to have occurred except purchase of city harbor privileges as provided in (c) of this section.
 - 1. The sale is subject to the city's sales tax when the point of delivery of tangible personal property is within the city.
 - 2. Where a real estate rental is located or where other rental property is delivered in the city, the sale of the same is subject to the city's sales tax.

3. Where a buyer receives a service within the limits of the city, and the service begins and ends therein, or, where the buyer receives an entire service therein, the sale of the same is subject to the city's sales tax; provided, however, purchase from the city of the privilege to use any harbor facilities owned or operated by the city shall be deemed to be a transaction and sale that shall be taxable unless otherwise made exempt by this code.
 4. A person who furnishes proof, in the form required by the revenue collector, that he has paid a sales tax in some jurisdiction other than the city, on the sale of services, rentals, or tangible personal property, is required to pay the City's sales tax only to the extent between the amount of the sales tax so paid elsewhere and the amount of the sales tax levied by the City. This paragraph applies to a sales tax levied in any taxing jurisdiction whether in or outside the state. (Ord. 17-03-21-02)
- I. **"Sale for resale"** means the sale of tangible personal property to a buyer whose principal business is the resale of the property whether in the same or an altered form and who holds a valid resale certificate issued by the City of Thorne Bay. Sale for resale also means the provision of services to a broker whose principal business is the resale of those services to an ultimate consumer and who holds a valid resale certificate issued by the City of Thorne Bay. Resale certificates do not apply to: travel and adventure services if the sale is to a person who would be entitled to claim the exemption provided by section or supplies purchased by travel and adventure service providers, hotels/motels, lodges, apartment/house rentals, or bed and breakfasts which are not separately charged to the consumer when resold.
 - J. **"Sales tax"** means and includes the tax herein levied on gross revenues derived from all taxable commercial retail sales, rentals and services, including sales of travel and adventure services, said revenues being computed in dollars and cents and the tax payable by the seller, the person performing the services, or the person receiving gross revenues from rentals, to the city.
 - K. **"Sales price"** means and includes the consideration, whether money, credit, rights, or other property expressed in terms of money paid or delivered by a buyer to a seller, all without any deduction on account of the cost of property sold, the cost of materials used, labor costs, discount, delivery costs, or any other expenses whatsoever paid or accrued, and without any deduction on account of losses.
 - L. **"Seller"** means and includes every person making sales at retail, including travel and adventure services, to a buyer or consumer whether as agent, broker or principal, and the term also means and includes persons performing services for remuneration as well as persons receiving gross revenues derived from rents.
 - M. **"Service"** means any application of labor, skill or knowledge to produce value in exchange for consideration and may include the provision of property or the right to use or occupy property but does not include services rendered to an employer by an employee. "service" may include, but is not limited to:

1. Professional, advertising, maintenance, recreation, amusement, and craftsman services.
 2. Services in which a product or sale of property may be involved, including personal property made to order.
 3. Utility services including but not limited to sewer, water, solid waste collection or disposal, electrical, telephone services and repair, natural gas, cable television, and internet services.
 4. The sale of transportation services originating inside the city.
 5. Services rendered for compensation by any person who furnishes any such services in the course of the person's trade, business, or occupation including services rendered for commission when the commission is paid on a service or product that has not been charged the city sales tax.
- N. **"Shipping and Freight Hauling Services"** means the service of transporting goods by means other than the united states postal service.
- O. **"Single-unit sale"** means the sale of a separate, single item or service which is customarily sold, advertised, contracted for sale or sold in the normal course of business as a separate and single item or unit or by a single unit of measurement (i.e., per gallon, ton, hour, day, week, month, foot, sack, yard, pound, piece, group, each, box, set, package, or other common unit of measurement). A single-unit sale shall include a sale by contract, quote, bid or other lump-sum amount only if the sale is based on and computed as a single bid, quote, sum, or package price rather than as an accumulation, sum, or aggregation of prices of separate identifiable or separable unit prices as defined above. For purposes of package tours, every individual in the tour will count as a single unit. For purposes of harbor fees and port dockage, each foot or other measurement of length will count as a single unit.
- P. **"Transaction"** means any transfer of property, or the right to use or occupy property, or the rendering of a service, for consideration.
- Q. **"Travel and Adventure Services"** include, but are not limited to, tours and charters on land and water, guide services, admissions, lectures, transportation services (excluding air transportation), and the rental of lodging, aircraft, vehicles, watercraft, and equipment, including fishing, boating, camping and other tour or adventure related goods. Travel and adventure services also include sales of goods incidental or related to such services. Regardless of the location of any marketing, brokering, packaging, re- sale, assignment, or other arrangement and regardless of the beginning or ending of any other related services the point of delivery of a travel and adventure service is within the city if the ultimate consumer of the travel and adventure service receives any such service which begins, ends, or occurs, as described in (c) of subsection (3) above. (Ordinance 20-07-21-01; Adding § B, C, D, F, G, M & N)

3.17.011 DELIVERY CHARGES.

- A. Delivery Charges. Delivery charges for services rendered for delivery of any personal property, goods or materials which delivery services both commence and terminate within the city are subject to sales taxes.
- B. Definition. "Delivery charges" means and includes any costs or charges imposed on the sale of freight services, shipping services, courier services, wharfage services, postal services, excepting postal delivery services rendered by the United States postal service, and any other services related to the delivery or transportation of any personal property, goods or materials of any nature whatsoever. (Ord. 984 §3, 1982)

3.17.012 EMPLOYEES/SUBCONTRACTORS--SALE OF SERVICES.

- A. The remuneration paid by an employer in the form of wages or salary to an employee for the sale of services by such employee to the employer are not taxable under the provisions of this chapter. Sales of services by contractors, or subcontractors, and any other type of sale of a service by a person other than an employee are taxable unless specifically exempted.
- B. A person shall be deemed to be an employee under the provisions of this chapter if the person claiming to be at employer is withholding a portion of such person's wages or salary in accordance with federal income tax laws and regulations. In the event no amounts are being withheld, it shall be presumed such person is not an employee unless the person claiming to be his employer submits clear and convincing evidence establishing the person's status as an employee.

3.17.015 MULTIJURISDICTIONAL SERVICES.

- A. All services which either commence or terminate within the city, or which are in any part rendered, supplied or provided within the city, shall be-subject to sales tax, except as otherwise provided in this chapter.
- B. Sightseeing charter services and shore excursions by land or water, which are provided by a person in the business of providing such services and are either sold within the city or begin or end within the city are subject to sales tax under this chapter to the maximum extent permitted consistent with state and federal law.

3.17.020 LEVY OF TAX.

To the fullest extent permitted by law, a sales tax of six percent is hereby assessed and levied on the following sales, except as otherwise specifically exempted under this chapter:

- A. All retail sales; including yard sales, and sales of similar type items occurring at the same location on a regular basis, whether for profit or non-profit (weekly, bi-weekly, monthly constitute a regular basis) catalog and internet sales sold locally or out of the area.
- B. All services; including the gross receipts earned as commissions by real estate agents for sales occurring within the city limits;
- C. All rents and fees paid for the use of real and personal property. (Ord. 17-03-21-02)
- D. Sellers with a physical presence and point of delivery. A seller that establishes a physical presence and point of delivery within the city in any calendar year will be deemed to have a physical presence within the city for the following calendar year. A seller has a physical presence under this chapter who establishes one or more of the following:
 - 1) Has any office, distribution or sales house, warehouse, storefront, or any other place of business within the boundaries of the city;
 - 2) Solicits business or receiving orders through any employee, agent, salesman, or other representative within the boundaries of the city or engages in activities in this state that are significantly associated with the seller's ability to establish or maintain a market for its products in this state;
 - 3) Provides services or holds inventory within the boundaries of the city;
 - 4) Rents, sells, or leases property located within the boundaries of the city; or
 - 5) Constructs, repairs, renovates, or improves real property if the real property is located in the city.
- E. Remote sales. A remote seller or marketplace facilitator without physical presence in the city that make sales of products, rentals or provides services transferred electronically, or delivered to a point of delivery located inside the city, shall be subject to the Alaska remote seller sales tax code as provided in section 3.17.220.

(Ordinance 20-07-21-01; Adding § D & E)

3.17.025 RULES APPLICABLE TO PARTICULAR BUSINESS OCCUPATIONS

A. Real Estate Sales Commissions.

1. Commissions and/or realtor fees for the sale, rental or management of real property located in the city are subject to sales tax, regardless of the location of the person to whom the commission and/or fee is payable.
2. Commissions and/or fees for the sale, rental or management of real property payable to a person who maintains an office in the city are subject to sales tax, regardless of the location of the real property.

(Ordinance 20-07-21-01; adding Section 3.17.025 in its entirety)

3.17.030 DUTY OF SELLER TO COLLECT.

- A. The tax levied under the provisions of this chapter is primarily upon the buyers of the personal property, rentals, or services, but the tax is payable to the city by the seller regardless of whether the seller has collected the same from the buyers. It is the duty of each seller to collect from the buyer or consumer the full amount of the sales tax payable on each taxable sale, service or rental, at the time the property sold is delivered, or when the rentals are collected. Every sale, which is made within the city, unless explicitly exempted by this chapter, or a subsequent ordinance, shall be presumed to be subject to the tax imposed under this chapter in any action to enforce the provisions of this chapter.
- B. In the specific instances where the tenant is occupying space in a USDA Forest Service, owned building or land, it is the tenant's obligation to pay the sales tax directly to the City, unless the landlord is willing to voluntarily receive the tax payment and remit to the city. The Landlord shall be responsible for all delinquent or unpaid sales taxes incurred by their tenants. (Ord. 17-03-21-02) (17-12-05-02)

3.17.35 TEMPORARY SUSPENSION OF SALES TAX COLLECTION.

The Council may for periods of up to one month, suspend the duty of a seller to collect the tax levied under this chapter. The Council may establish regulations, conditions, and limitations on the suspension of the duty to collect the tax. Such regulations, conditions, and limitations may apply the suspension to the sale of certain goods, or services while requiring the collection of the tax on other goods or services.

3.17.040 TAX ADDED TO SALES PRICE.

Sellers shall add the sales tax to the sales price, rental, or charge for services. Such sales tax is a debt from the buyer or consumer to the seller until paid, and the same is recoverable at law in the same manner as other debts.

3.17.050 UNLAWFUL FOR SELLER TO FAIL TO COLLECT.

- A. Any seller who willfully or intentionally fails, neglects, or refuses to comply with the provision of this chapter is guilty of a misdemeanor punishable by a fine not to exceed five hundred dollars, or imprisonment, not to exceed thirty days, or both; each act of violation and every day upon which any such violation occurs shall constitute a separate offense.
- B. In addition to the penalties provided elsewhere for violation of this section, a seller who intentionally or recklessly violates this section shall be liable to the city for civil penalties in an amount of three times the amount of sales tax the seller failed to collect.

3.17.051 COLLECTION OF SALES TAX AND NOT DUE.

It shall be unlawful and a violation of this title for a person to charge and collect sales tax which is not due under this title. (Ord. 1562 §7, 2006)

3.17.060 TAX TO BE PAID QUARTERLY.

The tax levied under this chapter is due and payable at the expiration of each quarter of each calendar year. It is the duty and responsibility of every seller liable for the collection of any tax imposed in this chapter, unless otherwise provided herein, to file with the revenue collector upon forms prescribed and furnished by the revenue collector, a return, prepared under oath, setting forth the amount of all sales, taxable and nontaxable, the amount of tax thereon and such other information as the revenue collector may require on such form or forms. The completed and executed return, together with remittance in full for the amount of the tax due, shall be transmitted to and received by the revenue collector's department of administrative services on or before 5:00 p.m., local time on the last day of the month succeeding the end of each quarter. If the last day of the month succeeding the end of a quarter is a Saturday, Sunday or a holiday observed by the revenue collector; the completed and executed return and amount of the tax due shall be transmitted and received by 5:00 p.m., local time on the next business day. Returns may be accepted based upon a timely postmark only if the return is sent certified or registered mail and receives a United States postal service cancellation on or before the due date. (ord. 1369, §1,1997) (Ord. 17-03-21-02)

3.17.065 REGISTRATION.

- A. A person, firm, partnership, corporation or other business entity shall file an application for registration with the revenue collector's department of administrative services on a form provided by that department, prior to making any retail sales, rendering any services, making rentals within the city or the opening of an additional place of business in the city. The completed application shall be returned to that department of administrative services along with the required licensing fee and a copy of the business entity's Alaska State business license.
- B. Each business entity shall be registered under the advertised name, and each separate business shall be registered under its own account.
- C. A person, corporation or other association that is about to make sales, perform services or make rentals shall first register with the revenue collector's department of administrative services and shall pay the licensing fee as required by TBMC Chapter 5.02-Business Licensing and Registration.

3.17.070 DUTY TO KEEP BOOKS--INVESTIGATION.

- A. Every seller shall keep and preserve suitable records of all sales made by him, and such other books or accounts as may be necessary for the revenue collector to determine the amount of tax for the collection of which he is liable hereunder. Every such person shall keep and preserve for a period of two years all invoices of goods and merchandise purchased for resale, and all such books, invoices and other records as may be necessary, all of which are open for examination at any reasonable time by the revenue collector, the City Administrator, city administrator, or his or their designee.
- B. For the purpose of ascertaining the correctness of a return or for the purpose of determining the amount of tax collected or which should have been collected by any person, the City Administrator or his designee may hold investigations and hearings concerning any matters covered by this chapter, and may examine any relevant books, papers, records, or memoranda of any such person, and may require the attendance of such person, or any officer or employee of such person. The City Administrator or his designee has the power to administer oaths and affirmations to such persons, and if any such person, being first duly sworn, refuses to answer any questions put to him by the manager or his designee, the manager may apply to the superior court for an order requiring the person to answer the questions. The City Administrator may issue subpoenas to compel attendance or to require production of relevant books, papers, records or memoranda. If any person refuses to obey any such subpoena, the City Administrator may apply to the superior court for an order requiring the person to comply therewith. The City Administrator is authorized to make arrangements with the

City of Thorne Bay, authorizing the city to conduct the investigations and hearings provided herein, including the exercise of all the powers created in this chapter.

- C. In the event the revenue collector is unable to ascertain the tax due to be remitted by a seller by reason of the failure of the seller to keep accurate books, allow inspection, failure to file a return, or falsification of records, the revenue collector may make an estimate of the tax due based upon all of the information available. Notice of the estimate of taxes due shall be furnished by certified mail to the seller and shall become final for the purposes of determining liability of the seller to the city in thirty days unless the seller earlier files an accurate return, supported by satisfactory records, indicating a lesser liability.

3.17.080 PENALTY AND INTEREST ON DELINQUENT TAXES.

- A. In the event a seller fails or neglects to file a return when due, or fails to remit taxes collected, or which should have been collected, in a timely manner as required by this chapter, then such return and tax is delinquent, and the revenue collector shall add thereto penalties as follows:
1. Within five calendar days after delinquency date 6%
 2. More than five calendar days up to and including thirty days after delinquency date 15%
 3. More than thirty days up to and including sixty days after delinquency date 20%
 4. More than sixty days after delinquency date 25%
- B. Interest shall accrue on the unpaid tax, not including penalty, from the date of delinquency to the date of payment at the rate of one percent per month. All remedies available to the revenue collector to collect taxes, penalties and interest, plus collection costs, shall commence on the date of delinquency. Payments received after the date of delinquency shall be applied first to payment of any collection costs, next an interest, next on penalty, and next on the tax. In the event of partial payment, penalties shall continue to accrue on the unpaid portion of the tax as provided for in (a) of this section. Interest at the rate of one percent per month shall also accrue on any unpaid amount of tax until paid in full. (Ordinance 21-11-16-01)

3.17.085 SALES TAX LIENS.

- A. The sales tax, interest, and penalties imposed by this chapter, and the administrative costs under subsection (f) of this section, shall constitute a lien in favor of the city upon all of the real and personal property of every person making taxable sales subject to this chapter.

- B. The lien imposed by this section arises and attaches at such time as payment becomes delinquent under Section 3.17.080 and continues until the entire amount is satisfied.
- C. If delinquent sales taxes, including interest and penalties, are not paid within ten days from the mailing of notice and demand for payment thereof, a notice of lien may be recorded in the office of the district recorder. Upon recordation, the sales tax lien has priority over all other liens except
 - 1. liens for property taxes and special assessments;
 - 2. liens that were perfected before the recording of the sales tax lien for amounts actually advanced before the recording of the sales tax lien;
 - 3. mechanics, and materialmen's liens for which claims of lien under AS 34.35.070 or notices of right to lien under AS 34.35.064 have been recorded before the recording of the sales tax lien.
- D. An action to foreclose a 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 the revenue collector to collect the sales taxes, penalties and interest due under this chapter.
- F. Fees for the administrative costs of filing on notices of liens, and releasing of liens shall be:
 - 1. Filing of notices of lien: twenty-five dollars plus recorder's office filing fee.
 - 2. Release of liens: twenty-five dollars plus recorder's office filing fee.
- G. If administrative costs for the filing of notices of liens and releasing of liens are imposed and have been collected by the City of Thorne Bay on delinquent sales taxes, including penalties and interest, no additional administrative costs shall be collected under subsection (f) of this section.

3.17.090 SALE OF BUSINESS--FINAL RETURN--LIABILITY OF PURCHASER.

If any seller sells his business to another person, he shall make a final sales tax return within five days after the date of selling the business; and his purchaser, successor, successors, or assigns, shall withhold a sufficient portion of the purchase money to pay the amount of sales taxes, penalties and interest due and unpaid to the city; and provided, further, the purchaser, successor, successors, or assigns are personally liable for the payment of the taxes, penalties and interest, accrued and unpaid to the city or city or both on account of the operation of the business by any former owner, owners, or assigns as shown by the final return or an audit conducted by the city within thirty days of the filing of the final return. Before any such sale is completed, the buyer and seller shall send to the revenue collector, by registered first-class United States mail, postage prepaid, a copy of the notice referred to in AS 45.06.105, which statute is made a part of this chapter, and the notice

shall be so sent regardless of whether such notice would have otherwise been required to have been made and sent under the other provisions of AS 45-06.101, et seq., Uniform Commercial Code--Bulk Transfers.

3.17.100 EXEMPTIONS.

The following sales and services are exempt from the sales tax :

- A. Retail sales and remuneration for services amounting to less than one hundred twenty-five dollars in any calendar quarter; however, any sales taxes collected shall be remitted;
- B. Casual and isolated sales not made in the regular course of business;
- C. Sales of insurance and bonds of guaranty and fidelity;
- D. The agreed value of new or used articles taken in trade as credit or part payment on the sale of new articles shall be deducted from the value of the article being purchased in determining the tax;
- E. Gross receipts derived from sales, services, rentals and transactions which the municipalities are prohibited from taxing under the Constitution and laws of the United States or the state;
- F. Gross receipts derived from sales initiated by orders received from outside the city where delivery is made outside the city by mail or commercial common carrier;
- G. Gross receipts derived from funeral charges and services, medical, dental, optometric, hospital services, or from sales of prescription medicines oxygen used for medical purposes, blood or blood plasma, artificial devices designed or altered for the use of a particular crippled person, artificial limbs, eyes and organs, hearing aids, prescription eyeglasses, artificial teeth sold by a dentist and materials used by a dentist in treatment, crutches, and wheelchairs; provided, however, services rendered by barbers, cosmeticians and masseurs are not exempt;
 - (1) Gross receipts from sales, services and rentals to any nonprofit organization or nonprofit institution if such organization or institution is organized exclusively for religious, educational, or charitable purposes, and if such organization or institution has obtained a certificate of exemption as provided for in subsection (2) and displays that certificate of exemption as provided for in subsection (3) below.
 - (2) Any organization or institution described in subsection (1) may apply to the City of Thorne Bay revenue collector for a certificate of exemption. Such application shall be made on forms to be furnished by said revenue collector, and each applicant shall be required to furnish such information as said revenue collector may reasonably require. If the revenue collector determines that the applicant is entitled to an exemption provided for in this section, the revenue collector shall

issue or cause to be issued a certificate of exemption which shall be effective as of its date of issue. The revenue collector shall endeavor to issue or deny the exemption within thirty days after the date an application is filed;

- (3) A buyer seeking to make a purchase entitled to a sales tax exemption under subsection (1) shall display a valid certificate of exemption to the seller at the time of purchase. If the buyer does not so display the required valid certificate of exemption the sale is taxable, and the seller shall collect the sales tax due on the sale.
- D. Gross receipts derived from sales, services and rentals to the United States Government, the state and its political subdivision, and municipalities, or agencies funded by these governments;
- E. Retail sales of food in school and college cafeterias and lunchrooms which are operated primarily for teachers or students and which are not operated for profit;
- F. LEFT BLANK INTENTIONALLY
- G. Gross receipts or proceeds derived from the transportation of students to and from grade or high schools in motor or other vehicles;
- H. Gross receipts derived from sales of real property, excepting the gross receipts earned as commissions by real estate agents shall be taxable;
- I. Dues or fees to nonprofit clubs, labor unions, or fraternal organizations;
- J. Gross receipts derived from veterinary services;
- K. Gross receipts or proceeds derived from sales made directly to consumers or users of newspapers;
- L. LEFT BLANK INTENTIONALLY
- M. Gross receipts derived from sales of educational services by a nonprofit institution in providing a program of learning on a formal study basis in an institution of learning which has an organized curriculum consisting of specific subjects and skills as outlined in the State of Alaska course of study as officially adopted by the State Department of Education for elementary, junior high or senior high schools, for children ages five through eighteen.
- N. Gross receipts derived from sales of day care services for children;
- O. (1) Gross receipts derived from sales where the purchase is made with food coupons, food stamps or other type of certificate issued under 7 U.S.C. Sections 2011-2025 (Food Stamp Act); and (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).
- P. That part of the sales price paid by the buyer for travel and adventure services purchased outside the city, which is not remitted, directly or indirectly, to the person providing or performing the service and which is a selling cost or commission or similar charge.

- Q. Remuneration received for services and materials, including caskets, used or furnished for funerals;
- R. The part of the selling price of a single item of tangible personal property that exceeds seven thousand five hundred dollars (\$7,500.00). A single item is an item sold in a single sale consisting of integrated and interdependent component parts affixed or fitted to one another in such a manner as to produce a functional whole. It includes optional accessories for such items as boats and automobiles if the accessories are useful or essential for the operation or use of the item, and include in the original transaction/sale;
- S. Airfare or the air charter sales price paid for transportation of persons or on a federal airway but excluding the portions of a sale of flightseeing or round-trip air/water/shore excursion travel or adventure services which are not charges for transportation of persons on a federal airway.
- T. Gross receipts in excess of ten thousand dollars derived from sales of material and labor for the clearing of land, excavation, or fill or placement of material on real property for construction of a facility, and sales of building construction materials and labor used in constructing a permanent building within the city, provided that the improvements are constructed pursuant to a valid sales tax exemption permit issued or renewed no more than one year prior to the sale of transaction being exempted from the tax. Construction materials shall include: all structural and finish materials for a permanent building used on the lot wherein the building is being constructed, and installation of infrastructure to said building such as water, sewer, power and phone and all parts to said infrastructure. Sales, to qualify for this exemption, shall be recorded by the seller, together with the date, the purchaser's name, and the sales tax exemption permit number. Any purchaser who attempts to avoid paying sales tax by using a sales tax exemption permit number for materials or labor not actually used in the structure for which the permit was issued shall be subject to a civil penalty up to twenty-five percent of the price of the materials or labor involved in the evasive purchase. The cost of the permit will be six hundred dollars; 3.16.050. (Ordinance 05-09-06-01; Prior Ord. 10-03-02-01)

3.17.110 SALES TAX EXEMPTION FOR THE ELDERLY.

Anyone sixty-five years of age or older may apply for and be issued by the City Administrator or designee a senior citizens sales tax exemption card, for fifteen dollars, to be renewed bi-annually. This card entitles the person to be exempted from the operation of the city's consumer's sales taxes on purchases of all types of property, rentals and services, except alcoholic beverages of all types and all types of tobacco products, not for use in any trade or business. No seller within the city shall charge or collect the sales tax on exempted purchases from any person who displays such a valid sales tax-exempt card. All sellers within the city shall keep records of such exempt sales and submit quarterly

totals of such sales to the revenue collector, together with any other information required by law. To qualify for a tax exempt card a person must provide a copy of their Alaska ID or driver's license, and proof they have resided in Alaska, as a permanent resident for the past 12 months, received an Alaska Permanent Fund Dividend, documentation required as part of a permanent fund application or other documentation that verifies a person has established permanent residency in Alaska must be submitted to show proof of residency. (Ordinance 17-05-16-04)

- A. A spouse under 65 years of age is not eligible for the exemption and cannot purchase anything without the presence of the exempt spouse except as listed in subsection (B) of this section.
- B. No person who has not duly applied for and received such an exemption card may use it to obtain such tax exemption. However, in the case where a person is an invalid or otherwise physically unable to leave their home or dwelling to use the card, the city may issue a special card authorizing another person to use the special card for the benefit of the invalid or otherwise physically unable person to use the card. (Ord. 12-08-07-01)

3.17.120 UNLAWFUL TO MISREPRESENT EXEMPTIONS.

Any buyer or consumer who falsely states or in any way misrepresents the use to which merchandise or material is to be put for the purpose of securing tax exemption under the terms of this chapter is guilty of an unlawful act and upon conviction thereof is subject to the penalties provided in section 3.17.060 of this chapter. (Ord. 870 §2(part), 1977)

3.17.130 USE OF PROCEEDS OF SALES TAX.

As of January 1, 2010, Thorne Bay Municipal Sales Tax is 6%. Five sixths (5/6) or eighty-three percent (83%) of the total sales tax collected shall be used for general municipal purposes. One sixth (1/6) or seventeen percent (17%) shall be placed in a savings account at the end of each calendar quarter to be divided 40/60 for community development projects and the maintenance and improvement of streets and roads. (Ord. 10-01-05-01)

3.17.150 REGULATIONS AUTHORIZED.

The City Council or City Treasurer is authorized to prescribe by departmental regulations the forms to be used and the methods and procedures to be followed by the revenue collector in collecting the taxes. This authorization does not authorize regulations of substance which impose any requirements upon buyers or sellers.

3.17.180 PROTEST OF TAX.

- A. A buyer who protests the payment of the tax levied under this chapter shall pay the tax and shall provide the seller and the revenue collector's director of administrative services with a written statement of protest within five working days of the sale. The written statement shall identify the sale, rental or service that is the subject of the tax protested, the amount of tax paid, the buyer's and seller's name, mailing address, and telephone number and the basis for the protest.
- B. If the seller protests his liability for a final assessment under Subsection 3.17.070(c) or if the seller has any other cause of action, grievance or protest concerning the legality, collection or payment of the sales tax, he shall pay the tax under written protest setting forth the basis for the protest. No action for a refund may be maintained nor may a defense to nonpayment be maintained in a civil action unless the amount in dispute has been paid by the seller under written protest filed at or before the time of payment.

3.17.190 FORGIVENESS OF UNCOLLECTED TAXES, PENALTIES AND INTEREST.

- A. The City Administrator, with the consent of the Mayor and council, may forgive the payment of uncollected sales taxes, interest and penalty thereon and penalties for failure to file owing by a seller to the city upon a determination by the City Administrator that such uncollected sales taxes have never been collected by a substantial portion of a clearly definable class of sellers or which have never been collected on a substantial portion of a clearly defined class or type of transaction or service.
- B. The City Administrator may, upon recommendation of the Mayor and City Council, authorize forgiveness of uncollected sales taxes, interest and penalty thereon and penalties for failure to file, as part of the compromise and settlement of a disputed claim in an action for collection of such funds.
- C. The City Administrator, with the consent of the Mayor and City Council, may onetime forgive the payment of uncollected sales taxes, interest, and penalty thereon and penalties for failure to file owing by a seller to the city upon a determination by the city administrator that such uncollected sales taxes are the result of a family medical hardship. (Ord. 17-03-21-02)

3.17.200 APPEALS.

- A. A seller aggrieved by the action of the revenue collector in fixing the amount of the tax or in imposing a penalty or interest shall appeal to the revenue collector's manager within forty-one calendar days from the date taxes are due and payable under this chapter. A seller who has a cause of action, grievance or protest concerning the legality,

collection or payment of the sales tax shall appeal in this manner and within the same forty-one days. All right to an appeal shall be deemed waived if not timely requested as set forth in this subsection.

- B. Contested taxes, penalties and interest that remain unpaid shall continue to accrue penalty and interest as provided by this title until paid. Contested taxes, penalties and interest that are paid and are found to be overpaid shall be refunded with interest at the rate of eight percent from the date of payment.
- C. All appeals shall be filed in writing with the revenue collector's manager and shall contain all of the following information:
 - 1. Name, address, and telephone number of the aggrieved seller;
 - 2. A specific and detailed statement of the amount of tax, interest or penalty contests, the basis and grounds upon which the appeal is made, and all pertinent records, documents, or other evidence substantiating the grounds as stated;
 - 3. A statement of the relief sought; and
 - 4. A statement as to whether a hearing is requested.
- D. Arguments or reasons for failure to timely file a return and remit taxes collected shall not be considered a valid basis or grounds for granting an appeal. The basis and grounds for granting any appeal are limited to:
 - 1. The identity of the seller is in error;
 - 2. The amount of the debt is erroneous due to a clerical error (and the nature and extent of the error is specified in the request for a hearing);
 - 3. The seller disputes the denial of exemption(s) for certain sales; or
 - 4. Taxes have been levied and forgiven in accordance with Section 3.17.190.
- E. A request for appeal is filed on the date it is personally delivered, or if delivered to the revenue collector's manager by United States mail, the date of the United States Postal Service postmark stamped on the properly addressed cover in which the request is mailed. If the due date falls on a Saturday, Sunday, or a holiday, the due date is the next business day. A current mailing address must be provided to the revenue collector's manager with the request for appeal, and any change in mailing address after the request for appeal is filed must be reported to the revenue collector's manager.
- F. Upon such filing of a written appeal, the revenue collector's manager shall immediately send a copy thereof to the City Administrator or administrator. The city may provide written information that may be considered in deciding the appeal.
- G. Unless the appellant waives a hearing, the revenue collector's manager or person designated by the revenue collector's manager shall hold a hearing to determine whether a correction is warranted. The revenue collector's manager or designee shall decide the appeal based upon the pertinent records provided by the parties involved or discovered by any investigation ordered by the revenue collector's manager and, if a hearing is requested, any evidence presented at the hearing. If a hearing is requested, the appellant need not appear at the hearing. If the appellant fails to appear, the

revenue collector's manager or designee may make a determination based upon the evidence received and any written materials submitted by the appellant. The determination need not make formal findings of fact or conclusions of law, but the written determination shall state the reasons for the decision and indicate the evidence relied upon. Such determination shall be issued no later than ten business days after the date of hearing if a hearing is held or ten days after the appeal is filed if the hearing is waived. Such determination shall be final.

- H. Taxes, penalties, and interest declared to be due in the final determination shall be subject to normal collection action of the city. The amount due must be paid or if the decision of the revenue collector's manager is appealed, a bond to secure payment must be filed with the court in accordance with Alaska Rules of Court, Rules of Appellate Procedure.
- I. Within thirty days after receipt of the final determination, a seller aggrieved by the decision may appeal to the Superior Court in the First Judicial District. The seller shall be given access to the revenue collector's file in the matter for preparation of the appeal. If after the appeal is heard it appears the tax was correct, the court shall confirm the tax. If incorrect, the court shall determine the amount of the tax and if the seller aggrieved is entitled to recover the tax or part of it, the court shall order the repayment. The city shall then pay the amount due within fourteen days after receipt of a certified copy of the judgment, unless the city requests a stay pending its own appeal.

3.17.210 CLERICAL ERRORS OR OMISSION, REFUND OF SALES TAX; PENALTY AND INTEREST.

- A. The revenue collector's director of administrative services may correct manifest clerical errors or omissions at any time they are found and verified.
- B. If, in payment of taxes legally imposed, a remittance by a seller through error exceeds the amount due, and the revenue collector, on audit of the account in question, is satisfied that this is the case, the city shall refund the excess to the seller with interest at eight percent from the date of payment. A claim for refund filed one year or more after the due date of the tax is forever barred. A copy of the refund audit and entitlement shall be given to the City Administrator.

3.17.220 Alaska uniform remote seller sales tax code adopted by reference.

The city adopts by reference the Alaska uniform remote seller sales tax code (uniform code) of the Alaska remote sellers sales tax commission, as the code currently exists, and as may hereafter be amended. In the event that there is any conflict between this chapter and the uniform code, the provisions of the uniform code will apply; in the event that there

is an applicable provision in the uniform code that is not in this chapter, the city may provide that the uniform code provision shall apply to local sales, rentals, or services; further, provided, however, that in the event there is a conflict related to exemptions, this chapter will apply in lieu of the specific uniform code provision or definition. (Ordinance 20-07-21-01; adding § 13.17.220 in its entirety)

CHAPTER 3.18 - TRANSIENT OCCUPANCY TAX:**3.18.010 TITLE AND PURPOSE.**

- A. Title. This chapter shall be known as the “Transient occupancy Tax ordinance of the City of Thorne Bay, Alaska.”
- B. Purpose and Intent. It is the purpose and intent of the council that there be imposed on transient occupants of hotel rooms in the city a tax, the proceeds of which are to be paid as provided in Section 3.18.130. This ordinance shall be implemented on the 1st day of January following its passage.

3.18.020 DEFINITIONS.

Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter:

- A. **“Collected”** means the time at which the rent is earned if the operator uses the accrual basis of accounting, or the time at which the rent is received if the operator uses the cash basis of accounting. The same basis of accounting normally used for keeping the books and records shall be used for reporting and remitting the tax levied by this chapter.
- B. **“Hotel”** means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes and is held out as being used or available for such purpose to the public regardless of whether it is specifically referred to as a hotel, and shall include a bed and breakfast, lodge, cabin, guest room or similar facility. “Hotel” does not mean any hospital, convalescent home, sanitarium or home for aged people licensed as such by the state.
- C. **“Occupancy”** means the use or possession, or the right to the use or possession of any room or rooms or portion thereof, in any hotel for dwelling, lodging or sleeping purposes.
- D. **“Operator”** means the person who is proprietor of the hotel, whether in the capacity of owner, lessee, sub-lessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his principal or the managing agent shall, however, be considered to be compliance by both.

- E. **“Person”** means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any-other group or combination acting as a unit.
- F. **“Rent”** means the consideration charged for the occupancy of space in a hotel as well as for such equipment as rollaway beds, cribs, television sets, etc., valued in money, whether to be received in money, credits, credit card charges, goods, labor, property and services of any kind or nature without any deduction therefrom whatsoever.
- G. **“Rent package plan”** means the consideration charged for both food and rent where a single rate is made for the total of both. The amount applicable and apportioned to rent for determination of the transient occupancy tax under Section 3.18.030 shall be the same charge made for rent when not a part of a package plan.
- H. **“Transient”** means any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of not more than sixty consecutive calendar days, counting portions of days as full days; provided, however, the day a transient check out shall not be included in determining the thirty-day period if the transient is not charged rent for that day. Any person who in fact exercises occupancy or in fact is entitled to occupancy for a period of more than sixty consecutive days shall be deemed not to have been a transient from the date of commencement of such consecutive period for days of occupancy or entitlement to occupancy if the transient possesses a legally written lease or rental agreement for a period of sixty or more consecutive days.

3.18.030 TAX IMPOSED.

For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of four percent, in addition to city sales tax, of rent charged by the operator for the privilege of said occupancy. If the bed rent is considered to be part of a package price then it is up to the hotel to determine the value of their bed, which is not to be less than 1) the current rate of United States Government per diem, or 2) bed rent as advertised or collected separately in non-package transactions; whichever is greater. Said tax constitutes a debt owed by the transient to the city which is extinguished only by payment to the operator or to the city. The transient shall pay the tax to the operator of the hotel at the time such transient ceases to occupy space in the hotel; provided, however, if the rent is paid in installments, a proportionate share of the tax shall be paid with each installment, and the remaining unpaid tax shall be due upon the transient’s ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the revenue collector may require that such tax shall be paid by the transient directly to the revenue collector or may collect such tax directly from the operator.

3.18.040 EXEMPTIONS.

No tax shall be imposed where:

- A. The rent is at the rate of three dollars a day or less. The exemption in this subsection applies only where the total rent charged for a room is three dollars a day or less, or where the accommodations rented are in a dormitory and the rent for each transient is three dollars a day or less;
- B. Any person pays for lodging on a monthly basis with a legal signed lease or rental agreement, irrespective of the number of days in the month;
- C. Any person who 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;
- D. The gross receipts are derived from rentals of hotel rooms, bed and breakfast or other transient occupancy to the United States government, the State of Alaska, or a municipality, when payment is made by such governmental organization directly to the provider by purchase order or by other means of direct payment. The revenue collector may require such verification of direct payment to the provider by the governmental organization as deemed necessary.

3.18.050 OPERATOR'S DUTIES.

Each operator shall collect the tax imposed by this chapter to the same extent and at the time as the rent and sales tax is collected from every transient. If the operator fails to collect the tax imposed by this chapter for any reason, the operator shall be liable for the tax jointly and severally with the transient. The amount of tax shall be separately stated from the amount of the rent charged, and each transient shall receive a receipt for payment from the operator. A duplicate of this receipt shall be kept by the operator in accordance with section 3.18.090. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax rent, or that, if added, any part will be refunded. Each operator shall account separately and maintain separate monthly summary totals, for both taxable and nontaxable rents and for taxes collected. Taxable rents are those defined in section 3.18.020.

3.18.060 REGISTRATION.

Within thirty days after the effective date of this chapter, or within thirty days after commencing business, whichever is later, each operator of any hotel renting occupancy to transients shall register said hotel with the revenue collector.

3.18.070 TAX TO BE PAID QUARTERLY.

The tax levied under this chapter shall be due and payable quarterly in conjunction with city sales tax. Each operator shall make and file with the revenue collector on forms prescribed and furnished by the revenue collector, a return, prepared under oath, setting forth the amount of all rents charged, whether exempt or not, and the amount of tax collected for transient occupancy and such other information as the revenue collector may require on such forms. The completed and executed return, together with remittance in full for the total amount of the tax due, shall be transmitted to the revenue collector on or before the last day of the calendar month following the close of each calendar quarter.

- A. Each operator shall file a return even though no tax may be due. This return shall show why no tax is allegedly due, or, if the business has been sold or otherwise transferred, the person to whom it was transferred, the date it was transferred, and the address and telephone number of the person to whom it was transferred.
- B. Each operator, upon cessation of business, shall, on or before the same day of the next month following cessation of business, or on the last day of the month if no corresponding day exists, make a return to the revenue collector on forms provided by him of the total rents charged and the amount of tax collected or due for transient occupancies, and shall, upon request, make his books and records available for audit. At the time the return is filed, the full amount of the tax collected or due shall be remitted to the revenue collector. Returns filed and taxes remitted and actually received by the revenue collector on or before the same day of the next month following the cessation of business, or on the last day of the month if no corresponding day exists, shall be deemed timely filed and remitted; otherwise, the taxes are delinquent and subject to the penalties imposed by Section 3.18.080.
- C. Returns filed and taxes remitted by mail shall be deemed timely filed only if the envelope or similar container enclosing the returns and taxes is addressed to the revenue collector, has sufficient postage and bears a United States postmark prior to midnight on the last day for reporting and remitting without penalty; otherwise, the taxes are delinquent and subject to the penalties imposed by Section 3.18.080.
- D. The revenue collector may establish shorter reporting periods for any operator if deemed necessary in order to ensure collection of the tax and may also require further and additional information in the return. All taxes collected by the operator pursuant to this chapter shall be held in trust for the account of the city until payment thereof is made to the revenue collector.
- E. Returns shall be accompanied by proof, satisfactory to the revenue collector, as to claimed exemptions, or exceptions from the tax herein imposed. The burden of establishing any tax exemption is upon the claimant. In the absence of such proof, the rentals or occupancies shall be deemed to have been taxable.

3.18.080 PENALTY AND INTEREST ON DELINQUENT TAXES.

- A. Original Delinquency. In the event an operator fails or neglects to file a return when due, or fails to remit taxes collected by him, or which should have been collected by him, in a timely manner as required by this chapter, then such return and tax is delinquent, and the revenue collector shall add thereto penalties as follows:

IF PAYMENT MADE: ADDITIONAL PENALTY

1. Within 30 days after delinquency date 15% of tax
 2. Within 60 days after delinquency date 20% of tax
 3. More than 60 days after delinquency date 25% of tax
- B. Interest. Interest on delinquent taxes shall accrue from the date of delinquency to the date of payment at the rate of one-half of one percent per month. All remedies available to the revenue collector to collect taxes, penalties, and interest plus collection costs, shall commence thirty days after the date of delinquency.
- C. Audit Deficiency. If, upon audit, an operator is found to be deficient in his return or his remittance or both, the amount deficient shall be deemed a delinquency under subsection (a) of this section and the revenue collector shall immediately invoice the operator for the amount of the net deficiency, plus a penalty as provided in subsection (a) of this section computed from the date the amount should have been paid, plus accrued interest. Interest shall be deemed to have commenced to accrue at the rate provided in subsection (a) from the date such tax should have been paid.

3.18.085 OCCUPANCY TAX LIENS.

- A. The occupancy tax, interest, and penalties imposed by this chapter, and the administrative costs under subsection (f) of this section, shall constitute a lien in favor of the city upon all of the real and personal property of every person making taxable occupancies subject to this chapter.
- B. The lien imposed by this section arises and attaches at such time as payment becomes delinquent under Section 3.18.080 and continues until the entire amount is satisfied.
- C. If delinquent occupancy taxes, including interest and penalties, are not paid within ten days from the mailing of notice and demand for payment thereof, a notice of lien may be recorded in the office of the district recorder. Upon recordation, the occupancy tax lien has priority over all other liens except;
1. Liens for property taxes and special assessments;

2. Liens that were perfected before the recording of the occupancy tax lien for amounts actually advanced before the recording of the occupancy tax lien;
 3. Mechanics, and materialmen's liens for which claims of lien under AS 34.35.070 or notices of right to lien under AS 34.35.064 have been recorded before the recording of the occupancy tax lien.
- D. An action to foreclose a 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 the revenue collector to collect the occupancy taxes, penalties and interest due under this chapter.
- F. Fees for the administrative costs of filing on notices of liens, and releasing of liens shall be:
1. Filing of notices of lien: twenty-five dollars plus recorder's office filing fee.
 2. Release of liens: twenty-five dollars plus recorder's office filing fee.
- G. If administrative costs for the filing of notices of liens and releasing of liens are imposed and have been collected by the City of Thorne Bay on delinquent sales taxes, including penalties and interest, no additional administrative costs shall be collected under subsection (f) of this section.

3.18.090 DUTY TO KEEP BOOKS-INVESTIGATION.

- A. Every operator shall keep and preserve full and complete records of all rentals or occupancies made by him, and such other books or accounts as may be necessary for the revenue collector to determine the amount of tax hereunder and the operator shall keep and preserve said records for a period of not less than two years in the city. All of said records shall be made available for inspection by the revenue collector, city administrator, and his or their designee upon request at any reasonable time.
- B. For the purpose of ascertaining the correctness of a return or for the purpose of determining the amount of tax collected or which should have been collected by any person, the city administrator, or his designee may hold investigations and hearings concerning any matters covered by this chapter, and may examine any relevant books, papers, records, or memoranda of any such person, and may require the attendance of such person, or any officer or employee of such person. The city administrator or his designee shall have the power to administer the oaths and affirmations to such persons, and if any such person, being first duly sworn, refuses to answer any questions put to him by the administrator or his designee, the administrator may apply to the superior court for an order requiring the person to answer the questions. The city administrator may issue subpoenas to compel attendance or to require production of relevant books, papers, records or memoranda. If any person refuses to obey any such subpoena, the city administrator may apply to the superior court for an order requiring

the person to comply therewith. The city administrator is authorized to make arrangements with the Ketchikan Gateway Borough, authorizing the borough to collect the taxes and conduct the investigations and hearings provided herein, and to exercise all the powers created in this chapter.

- C. In the event the revenue collector is unable to ascertain the tax due to be remitted by an operator by reason of the failure of the operator to keep accurate books, allow inspection, failure to file a return, falsification of records, or for any other reason, the revenue collector may make an estimate of the tax due based upon all of the information available. Notice of the estimate of taxes due and penalties and interest shall be furnished by certified mail to the operator and said-amount of tax shall become final for the purposes of determining liability of the operator to the city upon the expiration of thirty days unless the operator supported by satisfactory earlier files and accurate return, supported by satisfactory records, indicating a lesser liability.

3.18.100 ACTIONS TO COLLECT.

Any tax required to be paid under the provisions of this chapter shall be deemed a debt owed jointly and severally by the transient and the operator and recoverable by the city in an action brought against the transient, or the operator, or against the transient and operator jointly. Any taxes collected by an operator pursuant to this chapter which have not been paid to the city, shall be deemed to be funds held in trust for the account of the city.

3.18.110 VIOLATIONS.

Any operator who fails to collect or remit all or any portion of the tax provided for in this chapter, or fails or refuses to comply with the provisions of this chapter, or remits or rebates to a transient or other person whether directly or indirectly and by whatsoever means, all or any part of the tax levied under this chapter, or makes in any form of advertising, verbally or otherwise, any statement which implies that the operator is absorbing the tax, or paying the tax for the transient by an adjustment of prices of in any manner whatever, and any person who under the terms of this chapter, and any person who otherwise violates any provision of this chapter, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars, or imprisonment for not more than thirty days, or both such fine and imprisonment. Each act of violation and every day upon which any such violation occurs shall constitute a separate offense.

3.18.120 SEVERABILITY.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter or any part thereof is for any reason held to be unconstitutional, invalid or unenforceable such shall not affect the validity of the remaining provisions of this chapter or any part thereof. The city council hereby declares it would have passed each section, subsection, subdivision, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or unenforceable.

3.18.130 UTILIZATION OF REVENUES.

- A. The tax revenue collected pursuant to this chapter shall be deposited into the transient occupancy tax fund which is created.
- B. Moneys expended from the transient occupancy tax fund shall be allocated accordingly:
 - 1) 20% for the promotion of tourism in Thorne Bay
 - 2) 30% for the maintenance and improvement of Thorne Bay harbors
 - 3) 30% for EMS and fire related expenses
 - 4) 10% for the City of Thorne Bay general funding.
 - 5) 10% for community cleanup and park enhancement.

3.18.140 REVENUE COLLECTOR'S REGULATIONS.

The revenue collector may adopt reasonable rules, regulations, and forms to implement the provisions of this chapter.

3.18.150 SALE OF BUSINESS-FINAL RETURN-LIABILITY OF PURCHASER.

- A. If any operator sells or otherwise transfers his business to another person, such seller or transferor shall make a final transient occupancy tax return within five days after the date of sale or other transfer of the business and the purchaser, transferee, successor, successors, or assigns, shall withhold a sufficient portion of the purchase money or other consideration to pay the amount of transient occupancy taxes, penalties and interest due and unpaid to the city until such time as the selling or transferring operator produces a receipt from the revenue collector showing that all taxes, penalties and interest have been paid or produces a tax clearance certificate from the revenue collector stating that no tax, penalty, or interest is due.

- B. If the seller or transferor does not present a receipt or tax clearance certificate within thirty days after such successor commences to conduct business, the transferee shall deposit the withheld amount with the revenue collector pending settlement of the account of the seller or transferor.
- C. Not later than fifteen days after receipt of a written request from the transferee for a tax clearance, the revenue collector shall either issue the certificate of mail notice to the transferee at the address stated in the request of the estimated amount of the tax and penalty that must be paid as a condition of issuing the certificate.
- D. If the transferee of to the business fails to withhold a portion of the purchase price as herein required, such transferee shall be liable for the payment of the amount required to be withheld.
- E. Not later than ten days prior to close or completion of any sale or transfer, the buyer or transferee and the seller or transferor shall send to the revenue collector, by registered first-class United States mail, postage prepaid, a copy of the notice referred to in AS 45.06.105 which statute is made a part of this chapter, and such notice shall be so sent regardless of whether such notice would have otherwise been required to have been made and sent under the provisions of AS 45.06.101, et seq., Uniform Commercial Code-Bulk Transfers.

3.18.160 APPEAL.

An operator or other person aggrieved by a decision of the revenue collector or the city administrator may appeal the said decision of the city council by filing with the city clerk a written notice of appeal setting forth in detail the facts upon which such appeal is based not later than fifteen days after the date of such decision. In the event no appeal is filed within the time and in the manner as provided herein, said decision shall become final and conclusive.

CHAPTER 3.20 CITY CHECKS SECTIONS:**3.20.010 SIGNATURE-ISSUANCE APPROVAL.**

All checks drawn on the checking account of the city shall be signed by two signatories. The approved signatories on the checking account of the city shall be the chief executive officer, the vice mayor, the city administrator and the city treasurer. All checks prior to issuance shall be approved to be within budget allowances. (Ord. 93-27 § 3, 1993: prior code Ch. 29 § 3)

3.20.020 INSUFFICIENT FUNDS.

No city check may be written at any time when funds are insufficient. Willful violation of this provision and conviction shall result in a fine of not more than five hundred dollars. (Prior code Ch. 29 § 4)

3.20.030 MINIMUM CHECKING ACCOUNT BALANCE.

A minimum balance of two thousand dollars shall be maintained in the checking account of the city. (Ord. 93-27 § 4, 1993)