

1st Reading: January 28, 2019
2nd Reading: February 25, 2019

Presented By:
City Clerk

Action Taken:
Yes 6
No 0
Abstain 0

CITY OF NOME, ALASKA

ORDINANCE NO. O-19-01-07

AN ORDINANCE AMENDING SECTION 17.10.180 (DEFINITIONS)

WHEREAS, the City of Nome exempts certain organizations from paying sales tax; and,

WHEREAS, the Ordinances of the City of Nome and Alaska Statutes Title 29 do not clearly define what constitutes a charitable entity; and,

WHEREAS, the City of Nome seeks to provide clarity as to which organizations receive a sales tax exemption;

NOW, THEREFORE, BE IT ORDAINED BY THE NOME COMMON COUNCIL THAT CHAPTER 17.10 OF THE NOME CODE OF ORDINANCES BE AMENDED AS FOLLOWS:

Section 1. Classification. This is a Code ordinance.

Section 2. Amendment of Title 17. Title 17, Chapter 10, Section 180 of the Nome Code of Ordinances is hereby amended to read as follows [deleted text is ~~overstruck~~; added text is underlined]:

17.10.180 Definitions

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

“Buyer” means the person who in the ordinary meaning of the term takes title to, takes possession of, or buys property or receives services for valuable consideration.

"Charitable" means an entity eligible under the Internal Revenue Code to receive tax-deductible donations (e.g., 501(c)(3) and volunteer fire company or veteran organization 501(c)(4).

"Common carrier" means a person or entity engaged in transporting passengers or goods or both for valuable consideration in the normal course of the business of that person or entity, or a seller engaged in transporting directly to a common carrier goods sold by him or her in a retail sales transaction directly to a buyer residing outside the city.

"Merchandise" means tangible personal property offered for consideration by a seller.

"Merchandise acquired for resale" means merchandise purchased for the purpose of selling in an unaltered form to another buyer on a retail basis.

"Merchant" means an individual or organization engaged in the sale of tangible personal property.

"Rental" means allowing the use of tangible personal or real property for a specified length of time.

"Retail sales transaction" means any sale, lease, rental transfer or assignment of any right, title or interest in any goods, personal property or real property and any provision of labor or services, for valuable consideration, for any purpose except resale without alteration by a buyer presenting a resale certificate issued pursuant to NCO Section 17.10.175 applicable to the sales or service transaction. In determining whether an item or service is being purchased for resale without alteration in the regular course of the business of the buyer, the vendor shall be responsible to: (1) require the buyer to present the valid resale certificate and (2) verify that the resale certificate applies to the good or service being purchased [make a diligent inquiry into the purpose of the purchase by the buyer], and shall be held to the standard of inquiry expected of a reasonable and prudent person under similar circumstances acting in good faith toward the taxing authority.

"Sale" is meant to include each of the following categories of commercial activities:

- (1) The transference of ownership of tangible or intangible personal or real property for valuable consideration.
- (2) The rental or lease of tangible or intangible personal or real property for a specified length of time in exchange for valuable consideration.
- (3) The provision of services exclusive of those provided pursuant to an employer-employee relationship for valuable consideration.

“Seller” means every person making a retail sale transaction to a buyer or consumer, every person renting real or personal property, and every person performing services, for valuable consideration. In the event that retail sales transactions are being conducted in the name of a corporation, partnership, cooperative, association, joint venture, or other entity, the “seller” for purposes of responsibility and liability for the collection and remittance of sales tax shall include every director, officer and partner without exception, and also shall include every employee, agent and other person in a position of control and authority to collect and remit said sales taxes to the city.

“Selling price” means the fair market value of all detriment incurred by the buyer on the retail sale, including cash payments, debt obligations, and the value of exchanged items or services.

“Services” means all services of every manner and description that are performed or furnished for valuable consideration whether in conjunction with the sale of goods or not, but does not include services rendered by an employee to an employer.

“Taxable sale” means:

- (1) All sales for which an exception has not been established pursuant to NCO Section 17.10.020.
- (2) All sales for which an exemption has not been granted pursuant to NCO Section 17.10.030.

Used Exclusively for Religious Purposes. Retail sales and rentals of goods and services “used exclusively for religious purposes” means only goods, services or rentals which are used for, consumed in, or rendered only for the construction, alteration, maintenance, repair or outfitting of the following described property legally possessed by and used exclusively by a religious organization: the residence of a bishop, pastor, priest, rabbi, minister or religious order of a recognized religious organization; a structure, its furniture and its fixtures used solely for public worship, charitable purposes, religious administrative offices, religious education or a nonprofit hospital; lots supporting and adjacent to a structure or residence mentioned above in this subsection, which are necessary to convenient use of said structure or residence; and lots required by city ordinance for parking near a structure used solely for public worship, charitable purposes, religious administrative offices, religious education or a nonprofit hospital. (Ord. O-12-09-02 § 17 (part), 2012; Ord. O-03-07-1 § 2, 2003; Ord. O-93-6-6 § 1 (part), 1994)

Section 4. Effective Date. This ordinance is effective upon passage.

APPROVED and SIGNED this 25th day of February, 2019.



RICHARD BENEVILLE,
Mayor

ATTEST:



BRYANT HAMMOND,
Clerk



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AGENDA STATEMENT

Meeting Date: January 28, 2019
From: Bryant Hammond, Clerk
Subject: Clarification on Sales Tax Exemption Policy

Background & Justification:

Through consultation with the City Attorney the City Clerk determined that the City of Nome had granted sales tax exemptions in error. Following review of NCO 17.10, the City determined that “charitable” entity, as used in NCO Chapter 17.10, means an entity that is authorized by the IRS to receive tax-deductible donations. The City came to this conclusion for two separate reasons. As City Attorney Charles Cacciola notes:

First, it is a precept of tax law that exceptions are to be interpreted narrowly and in favor of taxation. Thus, if charitable is susceptible to more than one reasonable interpretation, the interpretation in favor of taxation prevails. Accordingly, “charitable” must be interpreted to mean a smaller, rather than larger, category of entities when there is more than one reasonable interpretation of the term “charitable.” Although charitable could arguably mean “nonprofit”, it can very reasonably be interpreted to mean an entity eligible to receive tax-deductible donations. Interpreting “charitable” to mean all nonprofits would exempt a larger category of entities than interpreting it to mean nonprofits that are entitled to receive tax-deductible donations. Thus, “charitable” cannot be interpreted to mean any nonprofit and the interpretation as an entity eligible to receive tax-deductible donations prevails.

Second, ordinances are interpreted to give meaning to all words in the ordinance. An interpretation that renders superfluous portions of the ordinance is disfavored. If “charitable” were interpreted to mean all nonprofits, other portions of NCO 17.10.030 would be rendered meaningless. For example, if “charitable” meant “nonprofit”, “nonprofit religious” would be rendered superfluous because a “nonprofit religious” entity would *already* be exempt as a nonprofit. With such an interpretation, there would be no need to state “nonprofit religious”. Therefore the council must have intended “charitable” to mean something narrower than nonprofit; otherwise it would not have also specified “nonprofit religious”. Accordingly, a “charitable” entity cannot mean a nonprofit entity.

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Upon such interpretation, the Clerk's Office denied several organizations, one of which was the VFW Post 9569. However, further legal review of the Internal Revenue Code demonstrated that certain 501(c)(4) organizations, such as volunteer fire companies and veterans organizations, are able to receive tax-deductible donations. Thus, the organization that requested the Council address this issue is already eligible under the original interpretation of the code, which was applied in error.

No action is required of the Council to correct the mistaken interpretation; a 2019 exemption certificate has been issued. However, it would benefit future Clerk's Office Staff to have a clearly defined policy in code to ensure staff members accurately carry out the desired policy of the City Council. The presented ordinance, O-19-01-07, clarifies the interpretation of the word "charitable" and the eligible organizations as the policy is currently understood.

Recommendation:

That the Nome Common Council amends the Nome Code of Ordinances to provide a clear policy as to which organizations qualify for exemption from paying sales tax.