

**CITY OF WASILLA
ORDINANCE SERIAL NO. 04-81(SUB)**

AN ORDINANCE OF THE WASILLA CITY COUNCIL AMENDING WMC SECTION 5.16.045.B SALES TAX ON BUILDING CONSTRUCTION BY PROPERTY OWNER TO PROVIDE FOR A CERTIFICATE OF EXEMPTION COSTING \$12.50 FOR ONE YEAR FOR NEW RESIDENTIAL CONSTRUCTION BY A PROPERTY OWNER, AND TO CHANGE THE COST OF A CERTIFICATE OF EXEMPTION FOR OTHER PROPERTY OWNER CONSTRUCTION TO THE AMOUNT OF TAX PAYABLE ON \$500 PER MONTH OF DURATION OF THE CONSTRUCTION PROJECT.

* **Section 1. Classification.** This ordinance is of a general and permanent nature and shall become part of the city code.

* **Section 2. Amendment of section.** WMC 5.16.045.B is amended to read as follows:

B. Building Construction by Property Owner. When work is performed on real property by the owner of the property, employees of the owner of the property, or the owner acting as the owner's own contractor, the owner may elect to pay [MAXIMUM] sales tax **in advance** on [ALL] materials, supplies and services purchased by the owner and incorporated in the work **in exchange for an exemption certificate as provided in this subsection. A property owner who exhibits a valid exemption certificate when purchasing materials, supplies or services to be incorporated in the work shall be exempt from paying sales tax, and the seller will be exempt from collecting sales tax on the transaction. A certificate that is issued under this subsection is not transferable.**

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

1. For the construction of a new residential building, the owner obtains an exemption certificate by submitting to the city a copy of the land use permit or building permit for the construction, and paying an amount equal to five-hundred dollars (\$500.00) multiplied by the sales tax rate in effect at the time of payment. The exemption certificate shall identify the project and its location, and state the date of issuance and expiration of the certificate and the owner's name. The certificate shall be effective for a period of one year from the date of its issuance.

2. For construction other than a new residential building, the owner obtains an exemption certificate by paying an amount [IS] equal to five-hundred dollars (\$500.00) multiplied by the estimated number of months' duration of the project and multiplied by the sales tax rate in effect at the time of payment [WHEN THE TAX IS DUE UNDER THIS SUBSECTION]. [BEFORE MAKING ANY PURCHASES THAT ARE TO BE INCORPORATED INTO THE WORK, THE OWNER MAY PAY THE MAXIMUM SALES TAX TO THE CITY. UPON SUCH PAYMENT, THE CITY SHALL ISSUE A BUILDING] The exemption certificate [SHOWING THE PAYMENT OF THE MAXIMUM SALES TAX AND SPECIFYING] shall identify the project[,] and its location, and state the estimated commencement and completion dates of the project and the owner's name. The certificate shall be effective from the estimated commencement date until the estimated completion date of the project [FOR THE LESSER OF THE DURATION OF THE WORK AND ONE YEAR, AND IS NOT TRANSFERABLE. BY EXHIBITING A VALID BUILDING EXEMPTION CERTIFICATE WHEN PURCHASING MATERIALS, SUPPLIES OR SERVICES TO BE INCORPORATED IN THE WORK, THE OWNER WILL BE EXEMPT FROM PAYING

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

SALES TAX, AND THE SELLER WILL BE EXEMPT FROM COLLECTING SALES TAX ON THE TRANSACTION].

* **Section 3. Effective date.** This ordinance shall take effect upon adoption of the Wasilla City Council.

DEFEATED by the Wasilla City Council on December 13, 2004.

Bold and underline added. [CAPS AND BRACKETS, DELETED.]



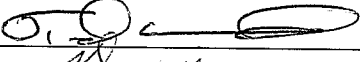
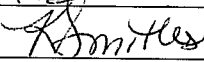
**CITY OF WASILLA
LEGISLATION STAFF REPORT**

**RE: ORDINANCE SERIAL NO. 04-81(SUB): AMENDING WMC SECTION 5.16.045.B
SALES TAX ON BUILDING CONSTRUCTION BY PROPERTY OWNER.**

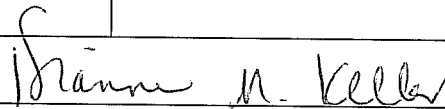
Agenda of: December 13, 2004

Date: December 7, 2004

Originator: Ted Leonard, Director of Finance and Administrative Services

Route to:	Department	Signature/Date
	Police	
	Recreational and Cultural Services Library, Museum	
	Public Works Planning	
X	Finance *signature required	 12/6/04
X	Clerk	

REVIEWED BY MAYOR DIANNE M. KELLER:



FISCAL IMPACT: *Not able to accurately determine at this time. Attachments: Ordinance Serial No. 04-81(SUB)*

SUMMARY STATEMENT: Under WMC 5.16.45.B, property owners may pay the maximum amount of the tax (\$12.50) and get a building exemption for the purchase of materials and supplies for a building project. The intent of WMC 5.16.045 B was to limit the sales tax payable for materials, supplies and services purchased by a property owner for a discrete "project" that the owner performs on the owner's real property. At the present time, the City of Wasilla has no mechanism to ensure that an exemption certificate is being purchased for each discrete project and that potential abuse of this section of the sales tax code is not happening.

We asked our Attorney for recommendations for potential solutions to reduce the possibility of abuse under section WMC 5.16.045B. Attached is our Attorneys response and recommendation. Our attorney has recommended that the City changed the code to provide that a property owner performing construction work pay \$12.50 per month for the estimated duration of the project in order to obtain an exemption certificate for purchases of construction materials, supplies and services. He believes that the change would have the effect of reducing the opportunity for abuse of the tax limit on construction performed by a property owner.

In Ordinance Serial No. 04-81(SUB), an additional section was added for the construction of new residential buildings. Under this section a builder/owner may purchase a building supply exemption certificate for \$12.50 by submitting to the city a copy of a land use permit issued from the City of Wasilla or Borough. The exemption certificate would be valid for a year from the date of the issuance of the Land permit. By requiring a copy of a land use permit issued from the City of Wasilla or the Borough, it is allowing the City of Wasilla a mechanism to ensure that the exemption certificate is being issued and used by purchaser of the exemption certificate in the manner that WMC 5.16.45 B intended the certificate to be issued and used for.

LAW OFFICES

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† MARYLAND BAR
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April 21, 2004

via **EMAIL** and **FIRST CLASS MAIL**

Mr. Ted Leonard
Finance Director
City of Wasilla
290 East Herning Avenue
Wasilla, Alaska 99654

Re: Taxation of Sales of Building Materials to Property Owner
Our File No. 505,780.26

Dear Ted:

You have asked that I recommend revisions to WMC 5.16.045.B, which limits the amount of sales tax on sales of materials, supplies and services purchased by an owner of real property for work performed by the owner on that property. You are looking for ways to reduce the potential for the abuse of this tax limitation. I recommend that the maximum sales tax on such purchases be increased by multiplying the maximum sales tax that currently is payable by the estimated number of months' duration of the construction project.

At present, WMC 5.16.045.B provides:

B. Building Construction by Property Owner. When work is performed on real property by the owner of the property, employees of the owner of the property, or the owner acting as the owner's own contractor, the maximum sales tax on all materials, supplies and services purchased by the owner and incorporated in the work is equal to five hundred dollars (\$500.00) multiplied by the sales tax rate in effect when the tax is due under this subsection. Before making any purchases that are to be incorporated into the work, the owner may pay the maximum sales tax to the city. Upon such payment, the city shall issue a building exemption certificate showing the payment of the maximum sales tax and specifying the project, its location, and the owner's name.

Mr. Ted Leonard
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The certificate shall be effective for the lesser of the duration of the work and one year, and is not transferable. By exhibiting a valid building exemption certificate when purchasing materials, supplies or services to be incorporated in the work, the owner will be exempt from paying sales tax, and the seller will be exempt from collecting sales tax on the transaction.

WMC 5.16.045.B appears intended to limit the sales tax payable for materials, supplies and services purchased by a property owner for a discrete "project" that the owner performs on the owner's real property. To use the tax limitation, the owner first must pay the maximum tax amount, and obtain an exemption certificate. The certificate is to be effective for the lesser of the duration of the "project" or one year. At the current rate of City sales taxation, the amount that a property owner must prepay to obtain the exemption certificate is \$12.50. You are concerned that a property owner may purchase a tax exemption certificate for \$12.50, and then use the certificate to avoid sales taxation on all of the property owner's purchases of building materials within a one-year period, regardless of whether the materials are incorporated in a discrete "project."

WMC 5.16.045.B must be considered in the context of WMC 5.16.035, which provides that only the first \$500.00 of the price in each transaction shall be subject to sales tax. Under this provision, the maximum tax that a property owner would pay on any single purchase of building materials would be \$12.50. In addition, one must consider that a property owner's payments to a contractor for construction work would be subject to sales tax. WMC 5.16.035 also would limit the sales tax on each such payment to a maximum of \$12.50, unless the payment was for work performed over period longer than one month, in which case WMC 5.16.035 requires that the payment be prorated over each one-month period, and applies the \$12.50 limit to each prorated monthly part of the payment. Since a construction project is likely to cost more than \$500.00, and to cost more than \$500.00 for each month that it continues, a property owner who hires a contractor to perform construction work will likely be obligated to pay a minimum of \$12.50 in sales tax per month of duration of the project.

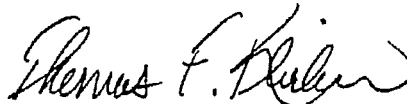
Comparing the operation of WMC 5.16.045.B with the determination of sales tax liability for construction contract payments under WMC 5.16.035 shows that the City sales tax structure favors construction projects performed by a property owner over those that are performed by a contractor. It could be argued that the sales tax structure would be fairer if the maximum tax amount applied equally to construction work performed by a property owner and by a contractor. This could be accomplished by providing that a property owner performing construction work must pay \$12.50 per month of the estimated duration of the project in order to obtain an exemption certificate for purchases of construction materials, supplies and services. This change also would have the effect of reducing the opportunity for abuse of the tax limit on construction performed by a property owner.

Mr. Ted Leonard
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I have prepared a draft ordinance amending WMC 5.16.045.B in accordance with the discussion above. I look forward to your comments on this draft.

Yours truly,

BIRCH, HORTON, BITTNER and CHEROT



Thomas F. Klinkner

TFK:cm
Enclosure

**CITY OF WASILLA
ORDINANCE SERIAL NO. 04-81**

AN ORDINANCE OF THE WASILLA CITY COUNCIL AMENDING WMC SECTION 5.16.045.B SALES TAX ON BUILDING CONSTRUCTION BY PROPERTY OWNER TO CHANGE THE COST OF A CERTIFICATE OF EXEMPTION TO THE AMOUNT OF TAX PAYABLE ON \$500 PER MONTH OF DURATION OF THE CONSTRUCTION PROJECT.

* **Section 1. Classification.** This ordinance is of a general and permanent nature and shall become part of the city code.

* **Section 2. Amendment of section.** WMC 5.16.045.B is amended to read as follows:

B. Building Construction by Property Owner. When work is performed on real property by the owner of the property, employees of the owner of the property, or the owner acting as the owner's own contractor, the maximum sales tax on all materials, supplies and services purchased by the owner and incorporated in the work is equal to five-hundred dollars (\$500.00) multiplied by the estimated number of months' duration of the project, and multiplied by the sales tax rate in effect when the tax is due under this subsection. Before making any purchases that are to be incorporated into the work, the owner may pay the maximum sales tax to the city. Upon such payment, the city shall issue a building exemption certificate showing the payment of the maximum sales tax and specifying the project, its location, its estimated commencement and completion dates and the owner's name. The certificate shall be effective from the estimated commencement date until the estimated **Bold and underline added.** [CAPS AND BRACKETS, DELETED.]

completion date of the project, [FOR THE LESSER OF THE DURATION OF THE WORK AND ONE YEAR], and is not transferable. By exhibiting a valid building exemption certificate when purchasing materials, supplies or services to be incorporated in the work, the owner will be exempt from paying sales tax, and the seller will be exempt from collecting sales tax on the transaction.

* **Section 3. Effective date.** This ordinance shall take effect upon adoption of the Wasilla City Council.

ADOPTED by the Wasilla City Council on , 2004.

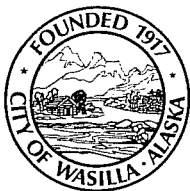
DIANNE M. KELLER, Mayor

ATTEST:

KRISTIE SMITHERS, MMC
City Clerk

[SEAL]

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

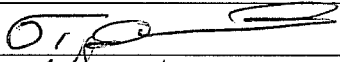
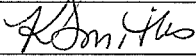


**CITY OF WASILLA
LEGISLATION STAFF REPORT**

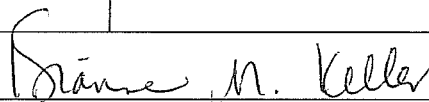
RE: ORDINANCE SERIAL NO. 04-81: AMENDING WMC 5.16.045.B SALES TAX ON BUILDING CONSTRUCTION BY PROPERTY OWNER TO CHANGE THE COST OF A CERTIFICATE OF EXEMPTION TO THE AMOUNT OF TAX PAYABLE ON \$500 PER MONTH OF DURATION OF THE CONSTRUCTION PROJECT.

Agenda of: November 22, 2004
Originator: Ted Leonard, Finance Director

Date: November 16, 2004

Route to:	Department	Signature/Date
	Police	
	Recreational and Cultural Services Library, Museum	
	Public Works Planning	
X	Finance *signature required	
X	Clerk	

REVIEWED BY MAYOR DIANNE M. KELLER:



FISCAL IMPACT: Unable to determine at this time
Funds Available yes no Account name/number:

Attachments: Attorney Opinion: Taxation of Sales of Building Materials to Property Owner.

SUMMARY STATEMENT: Under WMC 5.16.45.B, property owners may pay the maximum amount of the tax (\$12.50) and get a building exemption for the purchase of materials and supplies for a building project. The intent of WMC 5.16.045 B was to limit the sales tax payable for materials, supplies and services purchased by a property owner for a discrete "project" that the owner performs on the owner's real property. At the present time there is now way to ensure that the exemption program is not being abused.

We asked our Attorney for recommendations for potential solutions to reduce the possibility of abuse under section WMC 5.16.045B. Attached is our Attorneys response and recommendation. Our attorney has recommended that the City changed the code to provide that a property owner performing construction work pay \$12.50 per month for the estimated duration of the project in order to obtain an exemption certificate for purchases of construction materials, supplies and services. He believes that the change would have the effect of reducing the opportunity for abuse of the tax limit on construction performed by a property owner.