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## MEMORANDUM TO COUNCIL

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To: Mayor and City Council Members  
From: Marjie Veeder, Deputy City Manager  
Through: William Homka, City Manager  
Date: August 13, 2024  
Re: Response to Council Directive regarding Senior Citizen Sales Tax Refund Program

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**SUMMARY:** On June 25, 2024, Council directed the City Manager to bring forward a review of the senior citizen sales tax refund language and possible changes to address concerns of public comment on June 11, 2024 by Peggy McLaughlin. Tonight's discussion and the attached memo from City Attorney Sam Severin accomplish this directive.

**PREVIOUS COUNCIL ACTION:**

- June 25, 2024 Council issued a directive to the City Manager
- June 11, 2024 Council heard public comment from Peggy McLaughlin
- April 11, 2023 Council adopted Ordinance 2023-02 increasing the amount of the refund to \$400 and amending the residency requirement language in code
- March 9, 2023 Council discussed the senior citizen sales tax refund program in work session in response to the February 14 directive
- February 14, 2023 Council directed the City Manager to "Conduct research and provide information to Council at a future meeting regarding the senior citizen sales tax refund, so Council has information necessary to determine if the refund amount should be increased due to increases in the cost of living; and whether Council should consider tightening eligibility requirements for the refund. Please include the number of applicants per year for the last five years, the present eligibility requirements and any proposed additional eligibility requirements."

**BACKGROUND & DISCUSSION:** On March 19, 2024, Peggy McLaughlin applied for the refund for the estate of her deceased husband. The application was not approved. Ms. McLaughlin appealed, and the City Manager denied the appeal by letter dated April 11, 2024. Ms. McLaughlin then brought her issues to the City Council via public comment on June 11, 2024.

The City Attorney was involved in this matter during Ms. McLaughlin's appeal process; and subsequently wrote the attached memorandum in response to the directive issued by Council.

Council is directed to the attached memorandum titled Analysis of Senior Sales Tax Refund, authored by Sam Severin of Munson, Cacciola & Severin LLP.

Mr. Severin plans to join the Council Meeting via Zoom to present his memorandum, and to respond to inquiries from Council.

**ATTACHMENTS:**

- July 9, 2024 memorandum from City Attorney Sam Severin
- June 11, 2024 letter from Peggy McLaughlin

**MUNSON, CACCIOLA & SEVERIN LLP**

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**TO:** Unalaska City Council

**FROM:** Sam Severin



**RE:** Analysis of Senior Sales Tax Refund

**DATE:** July 9, 2024

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On June 25, Council directed the City Manager to “Bring forward to Council a review of the senior citizen sales tax exemption and possible changes to address concerns of public comment on June 11, 2024 by Peggy McLaughlin.” I am familiar with the issue. I was also provided a June 11, 2024 letter with attachments submitted to Council by Ms. McLaughlin.

The clearest way to look at this is to consider the specific case of Campbell McLaughlin first, then to analyze the efficacy of the ordinance independently.

Mr. McLaughlin passed away in 2023. The application for the senior citizen refund was filed on his behalf on March 19, 2024. UCO 6.40.050 C(1) requires that a person be a resident of the city for at least thirty (30) days prior to their application. A person who passed away in July of 2023 cannot be a resident in February or March of 2024. Eligibility also requires that “the consumer be at least sixty-five years of age or older by March 31 of each year.” Mr. McLaughlin did not qualify. A person who passed away the prior year cannot meet the code’s age requirements, which are based in the current year.

Mr. McLaughlin’s application was filed by his wife. The argument, as I understand it, is that because it is possible for an estate to apply for and receive a State of Alaska Permanent Fund Dividend (PFD), an estate should be allowed to apply for and receive Unalaska’s senior tax refund even if the city code requirements are not met. There is no correlation between an estate’s eligibility for a PFD and Unalaska’s senior citizen refund. In fact, the plain language of the code says otherwise. The code specifies that “natural persons” are entitled to the refund.<sup>1</sup> An estate is a legal entity, not a natural person.

The amount of the refund was adjusted from \$200 to \$400 in 2023. When the amount of the refund was increased in 2023, it was considered necessary to heighten the standards for proving residency. The ordinance uses eligibility for the PFD solely as a method to prove residency in

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<sup>1</sup> UCO § 6.40.050 (C) *SENIOR CITIZEN REFUND*. Natural persons of at least sixty- five (65) years of age on or before March 31 of each year shall be entitled to receive a yearly sales tax refund in the amount of four hundred dollars (\$400).

Unalaska. PFD eligibility requires a sworn statement of prior residency and an intent to remain in Alaska indefinitely. The applicant is required to provide their residential address. While someone seeking the refund may be willing to check a box on a city form saying they are a bona fide resident under the code, they are less likely to attempt to mislead the State of Alaska. The reference to the PFD is solely an effort to increase the formality of the evidence required to qualify for Unalaska's senior citizen refund. Nowhere does the code suggest that someone who is eligible for the dividend is necessarily qualified for the senior citizen sales tax refund.

Nearly any city code will evolve over time. Modifications can be driven by changes in policy at the local level, state or federal legislation necessitating change, or improvements to avoid implementation or interpretation issues which were not foreseen initially. The arguments raised by Ms. McLaughlin are all addressed in the current code. There is no conflict with state law. However, it does not mean there is not room for improvement.

The clerk's office, having now had the benefit of one cycle of applications, did not note any problems with implementing the refund this year that could or should be improved.

Ms. McLaughlin's comment that the refund is more of a credit does resonate. It would require significant expenditures in a single month for someone to actually be entitled to a \$400 sales tax refund. The qualifying period could be expanded to ninety days, six months, or even a year. Such a change would require reviewing the entire section to ensure no other changes are necessary. It might not be as simple as lining through the existing 30-day language and replacing it. But there is no reason the qualifying time period could not be made longer. That said, there is no obvious legal impact from calling it a refund when it is arguably a credit. Whether to enlarge the qualifying period is a policy question rather than a legal necessity.

There are, of course, very minor grammatical amendments that one only notices upon significant scrutiny. For example, the second comma in the following sentence could be omitted if the ordinance were amended: The application form may require the consumer-applicant to provide proof of age and of residency, along, with other information reasonably necessary to administer this refund. The comma does not create any ambiguity or legal concerns. It is simply an example of the constant room for improvement that can but does not need to occur.

Peggy McLaughlin  
PO Box 920944  
Dutch Harbor AK 99692

June 11, 2024

City of Unalaska  
43 Raven Way- PO Box 610  
Unalaska, AK 99685

**RE: Senior Citizen Sales Tax Refund UCO 6.40.050 (C)**

Dear Honourable Mayor Tutiakoff and Unalaska City Council Members:

I am writing to seek clarification regarding the Senior Citizen Sales Tax Refund authorized under UCO 6.40.050 (c). The code, as written, is inconsistent and possibly contradictory, resulting in Senior Citizens being denied refunds that they might otherwise have qualified for and received. I am respectfully requesting the City Council to clarify this section of code for future applicants.

Please also find attached additional documentation: correspondence related to a recently denied application and appeal for a Senior Citizen Sales Tax Refund. The attachment includes correspondence between the applicant, City officials, and the City attorney.

The language as written under UCO 6.40.050 (c) was reviewed by Council in March and April in 2023. Stated on the record during those meetings, and specific to the intent of the edits that were adopted, Council wanted to strengthen eligibility requirements, to solidify year-round residency requirements, and to reduce the opportunity for fraudulent applications. Council Chose to add section (5) as new qualifying language which states:

*"Applicants shall prove residency in Unalaska by providing to the City Clerk evidence of either current voter registration in the State of Alaska, at an address in Unalaska or evidence of approved eligibility for the State of Alaska Permanent Fund Dividend for the current year, at an address in Unalaska. At the City Clerk's discretion, other proof of residency in Unalaska may be accepted"*

This section of code defines a mandatory requirement for proof of residency, and gives applicants two options by which to provide this proof. The State of Alaska Permanent Fund Dividend is one of the options that satisfies this mandatory proof. Further, the Alaska State Statutes have defined the qualifiers for residency for the PFD program to include defining eligible applications on behalf of an estate.

The attached denial letter states that, "actual eligibility for the senior refund is dictated by the Unalaska Code Ordinances not State statutes or regulations." This becomes a circular argument when the Unalaska Code of Ordinance uses a qualifying program with defined criteria under Alaska State Statute as proof of qualifying for the Unalaska program.

Additional contradiction surfaces in the language describing qualified residency in the current year and a process for proving residency based on criteria from the previous year. The qualifying language under UCO 6.40.050 (c)

- (1) *To be eligible for the refund, the consumer must be sixty-five (65) years of age or older by March 31 of each year, be a resident of the City for at least thirty (30) days prior to their application, and file a timely application for refund with the City. The application form may require the consumer-applicant to provide proof of age and of residency, along, with other*

*information reasonably necessary to administer this refund. The claim for refund may be made only by filing a timely application with the City Clerk."*

In theory, with a qualifying age one could move to the island at the beginning of the application period, live in Unalaska for 30 days, and qualify for the refund without having been a resident in the previous year. The payment thus becomes a credit rather than a refund for sales tax actually paid to the City of Unalaska.

It appears that one could live in Unalaska – and actually pay City of Unalaska sales tax -, for the qualifying time required to receive a PFD, die, and use the qualified PFD application as the mandatory proof of residency per UCO. However, the recent application filed on behalf of an estate and using this definition to prove residency, was ruled ineligible to receive the refund even though the application meets the residency requirement as described in the State of Alaska Permanent Fund Dividend qualifying criteria.

Council has made clear on numerous occasions, that this ordinance is intended to provide after-the-fact relief for senior citizens who live in Unalaska and who were paying City of Unalaska sales tax during the previous qualifying year. The current inconsistencies make it difficult to ensure that the intent of the Council to provide senior citizens with a sales tax refund and the literal meaning of the code are implemented consistently.

I respectfully ask Council to review this section of code to clarify Council's intent as to whether this is a refund or a credit, and whether Council's intent is clearly and consistently represented in the language of the code.

Sincerely,



Peggy McLaughlin

Estate of Campbell Charles McLaughlin  
PO BOX 920944  
Dutch Harbor, AK 99692

3/31/2024

RE: Senior Citizen Sales Tax Refund Appeal

To Whom it May Concern:

Please consider this a letter of appeal and a formal request for the City of Unalaska to reconsider the application for the Estate of Campbell Charles McLaughlin for 2023 Senior Citizen Sales Tax Refund. I appreciate the City of Unalaska soliciting legal counsel for their decision to deny the original application and I will frame this appeal around legal Counsel's expressed opinion.

The basis of this appeal is conflicting language in UCO 6.40.050 (C) that defines eligibility criteria for Senior Citizen Sales Tax Refund. It is also worth acknowledging the lengthy, on-the-record, discussion regarding proof of residency and eligibility criteria during Council meetings held in March and April of 2023. This matter was discussed during three different Council meetings: Work session March 9, 2023; and Ordinance 2023-02 first reading March 28, 2023 and second reading and adoption April 11, 2023. These meetings resulted in new Code Language for UCO 6.40.050 (C) which I intend to address.

During these meetings Council made clear their intentions to: increase the amount of sales tax to be refunded, strengthen the eligibility requirements to solidify year-round residency, and reduce the opportunity for fraudulent applications.

The Legal Opinion provided to the City of Unalaska cited two primary sections that excluded the Campbell McLaughlin estate from eligibility:

"UCO 6.40.050(C):

1. *To be eligible for the refund, the consumer must be sixty-five (65) years of age or older by March 31 of each year, be a resident of the City for at least thirty (30) days prior to their application, and file a timely application for refund with the City. The application form may require the consumer-applicant to provide proof of age and of residency, along, with other information reasonably necessary to administer this refund. The claim for refund may be made only by filing a timely application with the City Clerk."*

...  
This application for Campbell McLaughlin's estate meets the required three components in UCO 6.40.050 (C) 1: Campbell McLaughlin was 66 years and 3 months upon his death, he was a legal resident in Unalaska for 30 years with the same physical address for 24 years, and the application was filed timely on behalf of his estate, as is this appeal letter. He also qualified for the Sales Tax Refund the previous year. Proof of legal residency for 2023 is available upon request as per code and a copy of his death certificate was filed with the application for the sales tax refund.

The legal opinion also cited: ("UCO 6.40.050(C):

- 4) *"Resident of the City," for the purposes of this subsection, means a person who is physically present in the City with the intent to remain indefinitely in the City and to make a home in the City. The individual must also have maintained a principal place of abode in the City for at least thirty (30) consecutive days immediately preceding the date of application for a refund. A person demonstrates the intent required under this section through establishing and maintaining customary ties indicative of residence in the City and through the absence of*

*those ties elsewhere. Physical presence in the City is not, by itself, sufficient to establish residency.*

The application for the estate of Campbell McLaughlin met the criteria for this section of code with the exception of:

*"The individual must also have maintained a principal place of abode in the City for at least thirty (30) consecutive days immediately preceding the date of application for a refund."*

Campbell died more than 30 days prior to the application opportunity, but his principal place of abode was in the City limits for more than 30 days immediately preceding his death. The timing of Campbell's death kept him from meeting the literal meaning of the words, though he met the intent: Proof of legitimate residency and bona fide application. Council remained silent in their discussions regarding applications on behalf of estates and it is unknown whether this topic has ever been formally discussed.

However, Ordinance 2023-02 incorporated new language and an additional section in UCO 6.40.050(C):

*(5) Applicants shall prove residency in Unalaska by providing to the City Clerk evidence of either current voter registration in the State of Alaska, at an address in Unalaska or evidence of approved eligibility for the State of Alaska Permanent Fund Dividend for the current year, at an address in Unalaska. At the City Clerk's discretion, other proof of residency in Unalaska may be accepted.*

In 2008 a lawsuit was filed against the State of Alaska because of a denied application for a PFD based on residency requirements and timing of death. This lawsuit wound its way through the court system and ultimately resulted in legislation that set eligibility criteria for PFD applications on behalf of an estate. Simply stated the person must have met all other criteria and must not have died prior to June 30 of the qualifying year to file for a PFD.

Campbell Charles McLaughlin meets the City of Unalaska residency requirement by fulfilling this qualification in section 5, "applicants shall prove residency by evidence of approved eligibility for the State of Alaska Permanent Fund Dividend for the current year at an address in Unalaska."

The Alaska PFD program has already determined eligibility requirements for a PFD application for a deceased person. The City of Unalaska has codified using a qualified PFD application as a proof of residency. Campbell McLaughlin has a qualified PFD application for 2023. The logical conclusion is that Campbell McLaughlin has met the City's requirements for proof of residency, and thus meets the requirements for the Senior Citizen Sales Tax Refund.

I respectfully await your reply.

Regards,

Peggy McLaughlin

**CITY OF UNALASKA**  
43 Raven Way - P.O. Box 610  
Unalaska, Alaska 99685  
TEL (907) 581-1251 FAX (907) 581-4469



April 11, 2024

Peggy McLaughlin  
Estate of Campbell Charles McLaughlin  
P.O. Box 920944  
Dutch Harbor, AK 99692

**Re: Senior Citizen Sales Tax Refund Appeal**

Dear Peggy:

On March 19, 2024 you submitted an application for the Senior Citizen Sales Tax Refund on behalf of the estate of your deceased husband, Campbell McLaughlin. The City Clerk did not approve the application for refund. On March 31, 2024 you sent an e-mail to the City Clerk with an attached letter titled Senior Citizen Tax Refund Appeal. In your March 31 letter you requested the City reconsider the denial.

The requested reconsideration has taken place, and the City Clerk's denial of the application will not be overturned.

The relevant code is UCO 6.40.050(C):

**SENIOR CITIZEN REFUND.** Natural persons of at least sixty-five (65) years of age on or before March 31 of each year shall be entitled to receive a yearly sales tax refund in the amount of four hundred dollars (\$400).

(1) To be eligible for the refund, the consumer must be sixty-five (65) years of age or older by March 31 of each year, be a resident of the City for at least thirty (30) days prior to their application, and file a timely application for refund with the City. The application form may require the consumer-applicant to provide proof of age and of residency, along, with other information reasonably necessary to administer this refund. The claim for refund may be made only by filing a timely application with the City Clerk.

(2) An application for a senior citizen refund must be filed with the City between January 1 and March 31 of each year. Claims for refund filed after March 31 of each year shall be denied.

(3) Any eligible applicant who has a delinquent account of any kind with the City shall not be entitled to receive their refund directly. The City shall, instead, apply the refund to the delinquency. Only once the delinquency is paid may any surplus refund be directed to the eligible recipient.

(4) "Resident of the City," for the purposes of this subsection, means a person who is physically present in the City with the intent to remain indefinitely in the City and to make a home in the City. The individual must also have maintained a principal place of abode in the City for at least thirty (30) consecutive days immediately preceding the date of application for a refund. A person demonstrates the intent required under this section through establishing and maintaining customary ties



indicative of residence in the City and through the absence of those ties elsewhere. Physical presence in the City is not, by itself, sufficient to establish residency.

(5) Applicants shall prove residency in Unalaska by providing to the City Clerk evidence of either current voter registration in the State of Alaska, at an address in Unalaska, or evidence of approved eligibility for the State of Alaska Permanent Fund Dividend for the current year, at an address in Unalaska. At the City Clerk's discretion, other proof of residency in Unalaska may be accepted.

I understand Campbell passed away on July 12, 2023. Thus, under the code, he would not have been a resident of the city for at least 30 days prior to the 2024 application on March 19, 2024. A deceased person cannot have an intent to remain in the city. Nor can someone who died in 2023 maintain a principal place of abode in the city in 2024.

The code is designed around an annual application, considering criteria applicable in the current year. It requires the consumer to be sixty-five years or older "by March 31 of each year," and it requires the principal place of abode to be in the City "for at least thirty (30) consecutive days immediately preceding the date of application for a refund." Subsection (2) makes it abundantly clear this is an annual application for the current year. While information dating back to the prior year may have relevance to the decision, a person's actions in the prior year are not dispositive of eligibility in the current year.

I am aware of the permanent fund dividend changes in AS 43.23.005 permitting dividends to be paid for people who were alive for a certain portion of the "qualifying" or preceding year. However, actual eligibility for the senior refund is dictated by the Unalaska Code of Ordinances, not state statutes or regulations. Additionally, the Unalaska City Code makes the refund available to "natural persons." On the other hand, AS 43.23.005(h) specifically refers to the personal representative of the estate. In city code, permanent fund eligibility is used as one means of proving residence. It cannot, however, override clear substantive requirements, such as the requirement that the person be a natural person and be a resident of the city for at least thirty days prior to their application.

This reading is supported by looking at the intent of the code. It would make little sense that the 2023 changes to the code would expand eligibility by making it so people who qualified in a prior year would be qualified in the current year. The intent of referencing permanent fund eligibility as proof of residence was to tighten the eligibility requirements, not expand them, "particularly in light of the increased amount of the refund."

The intent of the ordinance is clear. It applies to natural persons residing in the city in the current year. Accordingly, I find the City Clerk's denial of the application was sound and supported by Unalaska's Code of Ordinances. I will not direct the clerk to grant the refund application.

Sincerely,

CITY OF UNALASKA



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Marjie Veeder  
Acting City Manager

## Peggy McLaughlin

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**From:** Peggy McLaughlin  
**Sent:** 31 March 2024 10:32  
**To:** Estkarlen Magdaong  
**Subject:** Senior Citizen Sales Tax Refund Appeal Letter  
**Attachments:** Sales Tax Refund Appeal- Campbell McLaughlin.pdf

Estkarlen,

Please find attached an appeal letter for the application of the Estate of Campbell McLaughlin Sales Tax Refund. Thank you for following through on this and of course if you have any questions feel free to reach out.

Regards,  
Peggy

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**From:** Estkarlen Magdaong <emagdaong@ci.unalaska.ak.us>  
**Sent:** 20 March 2024 10:46  
**To:** Peggy McLaughlin <pmclaughlin@ci.unalaska.ak.us>  
**Subject:** FW: Senior citizen sales tax refund for a deceased person?

Peggy,

Here is Sam's response to my inquiry..

### Estkarlen P. Magdaong



City Clerk  
(907) 581-1251 | [emagdaong@ci.unalaska.ak.us](mailto:emagdaong@ci.unalaska.ak.us)

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**From:** Sam Severin <SSeverin@bcfaklaw.com>  
**Sent:** Wednesday, January 24, 2024 10:46 PM  
**To:** Estkarlen Magdaong <emagdaong@ci.unalaska.ak.us>  
**Subject:** RE: Senior citizen sales tax refund for a deceased person?

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Estkarlen – It's good to hear from you. I hope all is well. As I see it, an application theoretically could be filed on behalf of the estate, but the refund would be denied.

UCO 6.40.050(C):

- (1) To be eligible for the refund, the consumer must be sixty-five (65) years of age or older by March 31 of each year, be a resident of the City for at least thirty (30) days prior to their application, and file a timely application for refund with the City. The application form may require the consumer-applicant to provide proof of age and of residency, along, with other information reasonably necessary to administer this refund. The claim for refund may be made only by filing a timely application with the City Clerk.

....  
(4) "Resident of the City," for the purposes of this subsection, means a person who is physically present in the City with the intent to remain indefinitely in the City and to make a home in the City. The individual must also have maintained a principal place of abode in the City for at least thirty (30) consecutive days immediately preceding the date of application for a refund. A person demonstrates the intent required under this section through establishing and maintaining customary ties indicative of residence in the City and through the absence of those ties elsewhere. Physical presence in the City is not, by itself, sufficient to establish residency.

A person who passed away in July cannot satisfy the eligibility requirements, such as residence. It sounds like this was a verbal inquiry, so a verbal response such as a phone call is in order? I'm viewing this as a pretty dry legal analysis - please let me know if you want some help working up an explanation that sounds a little more friendly and appropriate. If you choose to respond in writing, I am glad to review a draft.

Sam

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**From:** Estkarlen Magdaong <[emagdaong@ci.unalaska.ak.us](mailto:emagdaong@ci.unalaska.ak.us)>  
**Sent:** Wednesday, January 24, 2024 4:43 PM  
**To:** Sam Severin <[SSeverin@bcfaklaw.com](mailto:SSeverin@bcfaklaw.com)>  
**Subject:** Senior citizen sales tax refund for a deceased person?

Hi Sam,

We have someone who asked if she could apply for a sales tax refund for her husband who passed away last July 12, 2023? Last year was his first application, and he was a long time resident of Unalaska. She asked because she was able to file an estate application for a PFD and so she was curious if she could also do the same for the sales tax refund offered by the City to its senior citizens.

When my deputy relayed the question, at first I thought that wouldn't be possible because code says, first word, *Natural* persons of at least sixty-five years of age on or before March 31 of each year shall be entitled to receive a yearly sales tax refund in the amount of four hundred dollars (\$400). But the more I thought about it, the more I questioned myself that there might be a possibility that she could, since the State allows it for PFD. What's your take on this? How should I respond to her inquiry?

Thank you!



**Estkarlen P. Magdaong**  
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Phone (907) 581-1251  
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