



# MEMORANDUM

Date: May 16, 2025  
To: Mayor and Members of Common Council  
CC: Nickie Crowe, Director of Finance  
Dan Grimmer, City Clerk  
From: Lee Smith, City Manager  
Subject: Sales Tax

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I have conferred with our legal counsel regarding a sales tax referendum special use designation. Basically, special use of new sales tax proceeds can not be part of the referendum documents; however, the Council may enact an ordinance dedicating new sales tax proceeds use for but not limited to: roads, infrastructure, recreation, public works, etc. If the Council approves the FY 26 Budget containing the need for additional sales tax, I advise and recommend drafting an ordinance with special purpose designations to give assurance to taxpayers of where their money will be spent. Additionally, taxpayers will have public forums in which to speak to this in a Council meeting. Please find our legal counsel's opinion attached.

Lastly, the Council may alter these uses in the future at the pleasure of the Council with legal counsel's review in advance being recommended by my office.

Respectfully Submitted,

*Lee Smith*

Nome City Manager

"Start by doing what is necessary, then what is possible, and suddenly you are doing the impossible."  
Francis of Assisi

**MEMORANDUM**

**CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION**

**TO:** Lee Smith, City Manager  
**FROM:** Charles Cacciola  
**RE:** Sales Tax Levy Ratification and Dedication of Proceeds  
**DATE:** May 12, 2025

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The city is considering increasing the sales tax levy from 5% to 6% and dedicating the proceeds of the additional 1% to a specific use. You asked how such a dedication interacts with the requirement that the city's voters ratify the levy increase.

**DISCUSSION**

Alaska Statute 29.45.670 states: "A new sales and use tax or an increase in the rate of levy of a sales tax approved by ordinance does not take effect until ratified by a majority of the voters at an election." The requirement for voter ratification of a new sale tax or increase in the rate of levy does not extend to ordinances that adopt or repeal exemptions or that relate to the administration of tax collections or the use of tax proceeds.<sup>1</sup>

Whether voters ratify or reject a tax increase often depends upon their perception of the municipality's need for the revenue and how it will be spent. Voter support for a tax increase can be courted in various ways. Voter outreach and education are always important. In some circumstances, legal limitations on the scope of the tax or the use of tax proceeds are an important part of obtaining voter support.

Voter outreach often begins with recitals in the legislation that would put the question before the voters. An ordinance can dedicate tax proceeds to specific uses, with the council retaining authority to repeal or modify the dedication. In each of these scenarios, the city is not unduly restrained in its future budgeting. On the other hand, a dedication that appears on the ratification ballot presents legal uncertainty.

**A. Resolution/Ordinance Recitals Expressing Need & Purpose**

Recitals appearing on resolutions or ordinances provide context for the legislation. This formal memorialization of purpose informs the public of the reason for the legislation

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<sup>1</sup> See *City of St. Mary's v. St. Mary's Native Corp.*, 9 P.3d 1002 (Alaska 2000).

at the time it is under consideration, provides a historical record that outlives individual, and can also be an important tool for legal interpretation.<sup>2</sup>

When a city council adopts a resolution or ordinance that calls for putting a question before the voters, the recitals (or other stated legislative findings) are an opportunity for an official statement for why voters should vote yes. For tax increases, the budgetary need, which may include specific functions for which fundings is necessary, are often identified.

However, recitals do not bind the legislators or future action. Say ordinance has recitals reflecting that additional revenues are required due to a decline in return on city investments as explanation for why the ordinance repeals Nome's sales tax exemption for nonprofits.<sup>3</sup> In subsequent years, Nome has great returns on its investments. The exemption would remain repealed regardless of the performance of the city's portfolio. Similarly, a voter-ratified sales tax increase that the council adopted based on findings that the sales tax levy should be increased by 1% so that the city can adequately fund the city's schools would not be affected by the state subsequently stepping up and providing a reasonable base student allocation.

#### **B. Dedication of Tax Proceeds**

Article IX, Sec. of the Alaska Constitution provides that the "proceeds of any state tax or license shall not be dedicated to any special purpose" except for the permanent fund or when required by federal programs. However, this has not been extended to municipal tax, and many municipalities dedicate to specific uses certain tax revenues.<sup>4</sup>

An ordinance dedicating tax proceeds may be adopted, amended, and repealed the same as any other ordinance.<sup>5</sup> Thus, a code section dedicating a portion of sales tax to a specific use remains in effect until the council amends or repeals the dedication.

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<sup>2</sup> E.g., *Oels v. Anchorage Police Dep't Emps. Ass'n*, 279 P.3d 589, 596 (Alaska 2012).

<sup>3</sup> See NCO 17.10.030(b).

<sup>4</sup> Kenai Peninsula Borough Code 5.18.110(A) (sales tax proceeds to be used exclusively for borough school purposes); Kodiak City Code 3.08.025 (dedicating various percentages of sales tax revenues to various purposes); Unalaska Code of Ordinances 6.56.010(B) (dedicating tobacco excise tax revenue to public health purposes).

<sup>5</sup> Because a dedication is considered an appropriation, it cannot be imposed or repealed by a voter-led ballot initiative or referendum.

By codifying dedication of a portion of sales tax revenue, the public and councilmembers can have confidence that the purpose given for increasing the levy is not mere talk. At the same time, it is not immutable. A future city council can alter the dedication, but – as with any ordinance – only as the result of an open, public process where Nome taxpayers can be heard.

Should the council wish to present the voters with a sales tax increase with the proceeds from the increase dedicated to a specific use, we recommend that council adopt an ordinance that: (i) sets forth the new 6% levy and the dedication of the funds as code amendments; (ii) directs the clerk to put the rate increase (but not the dedication) on the ballot at the October municipal election; (iii) specifies that the code amendments (both the new 6% levy and the dedication) are not effective unless the city voters ratify the rate increase.<sup>6</sup> Thus, the dedication will be effective immediately upon voters ratifying the rate increase, but if the voters do not approve the increase the code remains unchanged.

Our view is that dedication of sales tax proceeds is best done by ordinance without expressly conditioning voter ratification on the dedicated use (see below). This balanced approach restrains present use of proceeds to the purpose that gives rise to the increased rate of levy while retaining flexibility for a future where the city's needs have changed.

### **C. Voter Ratification Conditioned Upon Dedication**

An example of a voter ratification conditioned upon dedication would be “Should the City of Nome increase the sales tax levy to 6% but only if use of the proceeds from the increase fund the police department?” The effect of voter ratification of a rate increase expressly conditioned on a dedication of the proceeds is uncertain.

The Alaska Supreme Court is “not be quick to [infer] limitations on the taxing authority of a municipality where none are expressed” and has construed AS 29.45.670 in favor of taxation.<sup>7</sup> On the other hand, ballot initiatives cannot be used for appropriations,<sup>8</sup> and the court has generally viewed the ballot box as an imprudent mechanism for

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<sup>6</sup> With municipal elections held in October, an increase in the levy should not go into effect until January 1 (or even July 1) of the following year so that sellers and the city have sufficient time to implement and administer the change.

<sup>7</sup> *All. of Concerned Taxpayers, Inc. v. Kenai Peninsula Borough*, 273 P.3d 1128, 1134 (Alaska 2012).

<sup>8</sup> *Id.*, at 1136-37.

managing public finances. The court has not addressed voter ratification conditioned on a dedicated use of the tax proceeds.<sup>9</sup>

A legal challenge to a sale tax increase ratified by voters with the ballot question expressly conditioning the increase on a dedication has several possible outcomes: (1) the increase and the dedication are valid, (2) the increase and the dedication are both invalid, (3) the increase is valid but the dedication is invalid, or (4) the tax proceeds are determined to be used in accordance with the dedication and the underlying question is not answered.

A court would liberally construe the use of the tax proceeds in favor of finding that the use complies with the dedication. Thus, if the use of the tax proceeds can be reasonably viewed as adhering to the dedication, a court is likely to hold that the tax is valid.<sup>10</sup> But if the case were presented in a way that the court is required to directly adjudicate the validity of voter ratification expressly conditioned on a dedication, we cannot reasonably predict how the issue would be resolved.

Money is fungible. If dedication is necessary, dedication to a use that constitutes a significant component of the city's budget will not functionally inhibit the city's budgeting flexibility. Thus, dedicating the proceeds of an additional 1% sales to levy to educational, public safety, or transportation purposes would simply allow the city to allocate the "unrestricted" funds that would have been used for this purpose to alternative purposes. Such a dedication amounts to an accounting exercise, not a spending obligation.

Voter ratification with a ballot question that expressly conditions the levy increase on a dedication is very likely to end up in the courts. None should not serve as the test case unless obtaining voter ratification expressly conditioned on a dedication of the tax proceeds is a practical necessity. If it is, we recommend that use be sufficiently broad so that the dedicated proceeds do not impose an additional spending obligation.

Please let us know if you have any further questions.

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<sup>9</sup> This issue was raised by the appellant in *All. of Concerned Taxpayers, Inc.*. However, it was raised in a reply brief and the court declined to consider the argument on its merits.

<sup>10</sup> See *id.*, at n. 19.