

**Lake and Peninsula Borough
Municipal Code
Title 6 Revenue and Finance**

Chapter 6.50 ANNUAL PERMIT FEE FOR PROFESSIONAL GUIDES

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Section 6.50.010 Permit Required.

Professional guides must procure a permit from the borough and pay the fees provided for in Section 6.50.020 of this chapter for each year they conduct business within the borough. The permit shall be valid for a period of one year commencing on January 1st and expiring on December 31st of the year for which the permit is procured. A permit is required:

1. Hunting guides registered in guide use areas and/or game management units within borough boundaries.
2. Guiding businesses registered with any National Park or Preserve within borough boundaries.
3. Lodge Operators who provide professional guide services as defined herein in addition to lodging services or as part of a tour package shall be required to procure a professional guide permit.
4. Air taxi operators and air taxi operators who provide guiding services in addition to air taxi service within the borough.

(Amended by Ordinance 15-03; 5/11/15)

Section 6.50.020 Procedure for Obtaining Permit

A. In order to obtain a permit as required by this chapter, the professional guide must accurately and completely fill out an application form, available through the Borough, and submit within 30 days of guiding activity in the borough. The application shall be accompanied by a check payable to the Borough, and submit within 30 days of guiding activity in the borough. The application shall be accompanied by a check payable to the Borough for twenty five dollars (\$25.00) annual Application Processing Fee. The application fee is nonrefundable.

(Amended by Ordinance 09-09; 11/14/09 & Ordinance 15-03; 5/11/15, & Ordinance 17-03; 3/24/2017)

B. The Borough Tax Administrator may require that the applicant submit documentation supporting the tax filing including, but not limited to: copies of all activity reports provided to the National Park Service, US Fish and Wildlife Service, or other Federal land management agencies, copies of fish and game harvest reports submitted to the Alaska Department of Fish and Game, copies of any occupational or business licenses required by the Alaska Department of Fish and Game, Department of Commerce, or other State or Federal Agency, and copies of any leases or land use permits obtained from the Department of Natural Resources or other State or Federal Agency or affected private landowner in cases where the Tax Administrator has reason to believe that the professional guide has not complied with the requirements of this Chapter. (Amended by Ordinance 17-03; 3/24/2017)

C. The following permit fees are established:

1. Professional Guides who provide guiding services only and do not provide any overnight accommodations or who provide guide services for lodges, when those services are not part of an inclusive Lodge package: \$3.00 per visitor-day. Professional Guides who provide guide services for lodges that are registered to pay the Hotel-Motel Room Tax under Chapter 6.90 shall pay \$1.00 per visitor day. (Amended by Ordinance 09-09; 11/14/09 & Ordinance 17-04; 3/24/2017)

2. Professional Guides who provide guiding services and primitive overnight accommodations.

(a) Primitive overnight accommodations include:

1. Cabins without indoor plumbing, running water, or restroom facilities. They also include established, permanent, or semi-permanent camps that have wall tents, framed huts, or other semi-permanent shelter. Camps qualify as "established" or permanent if they contain improvements such as cooking facilities, storage facilities for equipment, food, or fuel, and improvements to provide for solid waste disposal, human waste disposal, and drinking water. These overnight accommodations must be for the exclusive use of the guide's clients and used as part of the guiding package or tour.
2. Lodge or cabin accommodations with indoor plumbing, running water, and/or restroom facilities that are for the exclusive use of the guide operator's clients and is used as part of the guiding package price.

(b) If these facilities are available for rent by the general public or if they do not qualify as primitive as defined herein, they are subject to the Borough's Hotel - Motel Room Tax (Chapter 6.90 of the Municipal Code).

(c) \$3.00 per visitor-day, and

(d) \$250.00 per year for each established camp, cabin site, cabin, or lodge providing primitive overnight accommodations as defined herein. (Amended by Ordinance 09-09; 11/14/09; Ordinance 15-03; 5/11/2015 & Ordinance 17-04; 3/24/2017)

3. Professional guides who carry tents, sleeping bags, stoves, and other camping gear with them and camp in the field and carry this equipment out again; taking all such equipment with them when they leave, are subject to the guiding fee established above but are exempt from the overnight accommodation fees established above. (Amended by Ordinance 09-09; 11/14/09)

4. A professional guide who fails to obtain a permit and submit the proper fees by December 31st of a year in which he/she conducted business in the borough is prohibited from conducting business in the borough in any succeeding years until he/she has come into compliance with the requirements of this Chapter. The Borough reserves the right to exercise any and all of the remedies contained in Sections 6.50.020

(B), 6.50.030, 6.50.070 and any other applicable sections of this Chapter and State law in order to enforce the provisions herein. (Amended by Ordinance 09-09; 11/14/09)

(Section 6.50.020 (C) Amended by Ordinance 17-05 on 1/17/2017)

6.50.030 Estimated Fees / Forced Filing

If the Borough is unable to ascertain the amount of fees due from a professional guide for any given year because the guide has failed to apply for a permit, file the required application form, provide required supplemental information, filed a false, inaccurate or incomplete application, failed to keep accurate books and records as required, or has falsified records, the Borough may make an estimate of the amount of permit fees due based upon any evidence in its possession.

The Borough shall mail by certified mail or deliver to the guide written notice of the amount of the estimate. This amount shall be presumed to correctly state the amount of permit fees due unless the guide files an accurate return with supporting documentation and transmits the amount due to the Borough not later than thirty (30) days after the date on which the Borough mails or delivers the notice. A notice is sufficient under this section if it is either actually delivered to the guide, or if it is mailed by certified mail return receipt requested, at the guide's most current address as contained in the Borough's permit records. If the guide has not filed a correct return satisfactory to the administrator, along with the taxes due, within thirty (30) days of the date of mailing of the forced filing, the amount of any deficiency remaining unpaid on the forced filing is presumed correct and is delinquent from the date originally due; provided, if upon a subsequent audit or inspection of the records of the guide, it is determined that a greater amount was due, the guide shall be liable for payment of such additional amount. A

forced filing may be made if the Borough is unable to ascertain the tax due to be remitted by a guide by reason of the failure of the guide to keep accurate records or to allow inspections of the guide's records, or of the guide's falsification of records. (Amended by Ordinance 17-05 on 1/17/2017)

6.50.040 Confidentiality.

A. Except as provided below, all permit applications and supporting documentation filed with the Borough for the purpose of complying with the requirements of this ordinance and all associated data obtained from professional guides are confidential and shall be kept from inspection of all persons except officers, agents, and employees of the Borough. Provided however, that such applications and data obtained therefrom may be discussed by the Assembly in public session if the guide affected consents or makes a request for such discussion in writing.

B. Information in the possession of the Borough which was obtained by the Borough from a professional guide in the administration or enforcement of the provisions of this chapter which discloses the particulars of the business or affairs of the owner that is not otherwise public information is not a matter of public record. The information shall be kept confidential except when its production is required in an official Borough, State, or Federal investigation, law enforcement action, or court proceeding. These restrictions do not prohibit the publication of tax lists showing the names of taxpayers or delinquent taxes. Information otherwise protected by this chapter may be furnished on a reciprocal basis to other agencies of the State or Federal government concerned with the enforcement of tax laws or land use regulations.

C. In the course of a criminal or civil action to enforce any provision of this ordinance, the Borough may allege, prove, publish, and produce for any purpose any documents and/or information previously filed with the Borough. The Borough may deliver to a professional guide or his/her authorized representative a copy of any return filed by him or on his behalf. The Borough may also publish statistics concerning the information contained in returns if the publication is done in such a manner that the information contained in a particular return cannot be identified.

6.50.050 Record Keeping Required.

A. Every professional guide shall keep and preserve for a period of three years all records of business activities within the Lake and Peninsula Borough. Professional guides shall permit the Borough or its agent to examine, inspect, and copy said records, books, and accounts at any reasonable time. If the Borough initiates an enforcement proceeding against the professional guide under this Chapter, the professional guide must keep and preserve all records, even if that may exceed three (3) years, until said enforcement proceeding(s) are completed.

B. For the purpose of ascertaining the correctness of any return, or determining the amount of permit fees due, the Borough Manager or his/her agents may hold audits, investigations, and hearings concerning any matters covered by this ordinance, and may examine any relevant`` books, papers, records, accounts, or memoranda of any such professional guide, and may require the attendance of

any person through the issuance of a subpoena which shall be enforced under the Alaska Rules of Civil Procedure in the same manner as subpoenas issued by an officer or agency of the State.

6.50. 060 Appeals.

A. If a professional guide believes that he/she is exempt or otherwise not subject to the fees and requirements imposed by this chapter or believes that a penalty, interest, or other charge is not owing, but has been informed by the Borough that he/she is subject to the provisions of this ordinance or such penalty, interest, or charge is owing, the guide may protest the charge by paying the amount owed to the Borough on or before the due date and filing with the Borough at the time of payment a statement of protest setting out all relevant facts and clearly explaining why the guide is exempt or not subject to the provisions of this chapter. The payment and statement must be received not later than the 30th day following the date upon which a forced filing or other notice of violation or delinquency was mailed or delivered. Failure to file a statement of protest and to pay the amount claimed by the Borough as owing within the time permitted within this subsection or other section of this chapter constitutes a waiver of the right to protest administratively.

B. The tax administrator shall issue a written ruling on each collector protest within thirty (30) days of receipt of the protest or on such later date as may be required to insure full consideration of the issues raised in the protest. The guide has the burden of proof. The tax administrator may permit or require the guide to provide additional information relevant to the protest. The tax administrator may seek the advice of the Borough attorney on any protest. The ruling on the protest must set forth the specific reasons for the grant or denial of the protest. The ruling will be sent to the guide at the address given on the protest documents.

C. If a protest is granted, the tax administrator shall refund to the guide the penalty, interest, or charge levied or the fee collected and paid to the Borough that was exempt or otherwise not subject to the provisions of this chapter.

D. In the event a protest is denied, the guide may, within thirty (30) days of the date of denial, appeal the denial to the Borough Manager if the Manager was not acting as the tax administrator on the protest. The Manager shall receive such additional information whether written or oral as the guide may desire to present. The Manager may also receive such additional testimony and material as the tax administrator may present. The Manager shall render a decision in writing and give notice of the decision to the guide within a reasonable amount of time. The decision of the Manager, whether acting as the tax administrator or Manager, is final and is subject to judicial review by an appeal to the superior court under applicable appellate court rules.

E. Failure to file an appeal or protest as authorized under this section within the time permitted constitutes a waiver of the appeal or protest and any other rights of the guide to challenge the fees, penalties, interest, or other charge directly or collaterally.

6.50.070 Civil Penalties and Enforcement

To enforce payment of the required fees and any penalties, interest, and administrative costs of collection, the Borough may institute a civil action against the violator in the appropriate court for the State of Alaska and seek an injunction prohibiting the violator from operating without a permit until all required fees and other charges have been paid. The Borough reserves the right to exercise any and all additional lawful remedies available to it against violators of this chapter, including, but not limited to, the imposition of tax lien against the property and other assets of the guide or corporate officers of the company responsible for payment of the fees.

The Borough may also, in addition to any penalties or other fees, levy a charge to cover its administrative costs associated with collection actions including, but not limited to, actual and reasonable lawyer's fees.

A. A person who fails to file a return as required under this chapter or who fails to remit all the taxes due the Borough by that person shall pay a penalty of five percent (5%) of the taxes due with a minimum penalty of \$500.00 if no return is filed. The penalty is imposed for each month or part of a month during which the delinquency of failure to file exists up to a maximum total penalty for a single calendar quarter shall not exceed three thousand dollars (\$3000). The filing of an incomplete return shall be treated as the filing of no return.

B. Interest at the rate of twelve (12%) per annum shall be paid on all amounts due the Borough that are not received by the Borough as required under this chapter except interest does not accrue on penalties.

C. A person who fails to apply for a certificate of registration as required by this chapter shall pay a penalty of five hundred dollars (\$500.00). Such penalty must be paid before the license is issued or, if the original license was issued before the determination that a penalty was due or before a renewal or amended license is issued if the original license was issued before the determination that a penalty was due. A person who fails to apply for a certificate of registration, who engages in taxable transactions after being informed in writing that a certificate of registration is required, shall pay a penalty of one thousand dollars (\$400) (\$1,000) before the license is issued or before a renewal or amended license is issued if the original license was issued before the determination that a penalty was due.

D. A failure of or refusal of a person required to collect a tax under this chapter to produce records or allow inspection at such reasonable times as requested or demanded by the sales tax administrator shall pay to the Borough a penalty equal to three times any deficiency found or estimated to have occurred by the sales tax administrator; provided, the minimum penalty payment is three thousand dollars (\$3000).

E. A person required to maintain records under the provisions of this chapter shall immediately notify the Borough of any fire, theft or other casualty that would prevent the person from complying with the provisions of this chapter. Such casualty is a defense to a civil penalty levied under subsection E. of this section, but does not excuse the person from the liability for payment to the Borough of

taxes required to be collected. Accidental or unexplained loss of funds or records does not excuse a person from the performance of any of the requirements under this chapter.

F. The Borough shall apply payments received on a delinquency first to the payment of penalties, then to the payment of administrative costs of collection, then to the payment of interest, and then to the payment of delinquent taxes. (Section 6.50.070 was amended in entirety by Ordinance 17-06 on 1/17/2017)

Section 6.50.080 Borough's Duty to Issue Permit.

Upon receipt of an accurate and complete permit application and payment of the required fees, the Clerk or Finance Officer shall issue the applicant a permit listing the type of permit, the person's name and address, and the dates for which the permit is issued.

Section 6.50.090 Permit Not Transferable.

A permit issued pursuant to this chapter may not be assigned or otherwise transferred to any other person, business, or corporation.

Section 6.50.100 No Exclusive Right or Privilege.

A permit issued pursuant to this chapter confers no exclusive right or privilege upon the permittee.

Section 6.50.110 Compliance With Other Laws Required.

Procuring a permit pursuant to this chapter does not relieve the permittee from complying with any other applicable laws or regulations.

Section 6.50.120 Disposition of Permit Fees Collected.

All permit fees collected by the Borough pursuant to this chapter shall be deposited in the general fund and appropriated by the Borough Assembly.

Section 6.50.130 Severability.

If a court of competent jurisdiction determines that any provision of this ordinance or any application thereof to any person or circumstance is invalid, the remainder of this ordinance and its application to other persons or circumstances shall not be affected thereby.

Section 6.50.140 Definitions.

For the purposes of this Chapter, the following definitions apply:

1. "Person" means natural persons and includes partnerships, corporations, associations, and other business or non-profit organizations.

2. "Professional Guide" means a person who contracts to guide, lead, direct, or accompany others on hunting, fishing, sightseeing, rafting, camping, hiking or other recreational trips within the Borough. Exemptions include, 1) Lodge operators who do not engage in guiding as defined herein, 2) lodge employees who provide guide services to lodge customers pursuant to their employment by the lodge provided that the lodge itself has a valid guiding permit, 3) professional guide employees who do not directly contract with members of the public to

provide guiding services, and 4) air taxi operators unless such operators provide one or more of the services listed above in addition to providing air transportation.

3. "Lodge Operator" means a person who, for compensation, operates a lodge, hotel, bed and breakfast, house or cabin within the Borough providing overnight accommodations primarily to the general public, including, but not limited to, hunters, sport fishers, hikers, rafters, sightseers, other recreational visitors, business travelers, and seasonal construction workers. It does not include persons who operate company-owned facilities used primarily to house seasonal workers employed by the company in commercial fishing or fish processing activities.

4. "Tax Administrator" means the Borough Manager or the person designated by the Manager as Tax Administrator, or the authorized agent of the Administrator.

5. "Visitor-day" means one calendar day (24 hrs.), or portion thereof, for each person who visits the Borough and participates in guided activities as described herein including guides and any other individuals associated with such visits for any part of one day (24 hrs. from midnight to midnight). For example, one guide, one assistant guide, and four clients visiting the Borough on September 1st at 8AM, spending 3 nights, and leaving on September 4th, equals 24 visitor days. (6 people x 4 days = 24 visitor-days).
(Original Ordinance 92-14 3/17/92, Repealed and replaced by Ordinance 97-05,