

CITY OF DILLINGHAM, ALASKA

ORDINANCE NO. 2012-01 (Substitute)

AN ORDINANCE OF THE DILLINGHAM CITY COUNCIL LEVYING A 2.5% TAX ON SALES OF RAW FISH SUBJECT TO VOTER RATIFICATION

WHEREAS, the City of Dillingham has historically devoted substantial public resources for construction, operation and maintenance of public infrastructure intended to support commercial fisheries catching and processing salmon landed in waters of Bristol Bay adjacent to Dillingham; and; and

WHEREAS, much of the infrastructure supporting Bristol Bay commercial fishing was constructed with federal and state grants which do not provide for ongoing maintenance or replacement funds; and

WHEREAS, it is anticipated that there will be a need to improve infrastructure related to commercial fishing and that state and federal grant funds will not be as available as they were in the past; and

WHEREAS, all other municipalities of similar size and with similar fishing related infrastructure needs in the general Bristol Bay area levy a tax on sales of raw fish including, the Bristol Bay Borough, the Lake and Peninsula Borough and the cities of Togiak, Egegik and Pilot Point; and

WHEREAS, the estimated taxable value of commercial salmon harvested in or adjacent to Dillingham ranges between \$20,000,000 and \$30,000,000 annually; and

WHEREAS, a 2.5% tax on sales of raw fish is estimated to generate approximately \$710,000 annually;

BE IT ENACTED BY THE COUNCIL OF THE CITY OF DILLINGHAM:

Section 1. Amendment of Title 4. Title 4 of the Dillingham Municipal Code is hereby amended by adoption of a new Chapter 4.21 to read as follows:

4.21.010 Definitions.

When not clearly otherwise indicated by the context, the following words and phrases, as used in this chapter, have the following meanings:

"Buyer" means any person, whether acting as principal, agent or broker, making purchases of raw seafood product from a seller and who is also an individual or entity, according to this Chapter, required and responsible to collect and remit raw seafood sales tax levied by the City of Dillingham, Alaska.

"City" means City of Dillingham.

"Collector" in the case of the sale of raw fish is the buyer.

(Additions are underlined; Deletions are in [brackets])

"Processed" or "processing" means cooking, canning, smoking, butchering, freezing, salting, dehydrating and other activities that modify the condition of the fish in preparation of the fish for sale, but does not include decapitating, gutting, gilling, sliming, or icing by the person harvesting the fish if done for the purpose of maintaining the quality of the fish until it can be sold.

"Property tax" means the tax levied under Chapter 4.15 of this Code upon real property owned by the Taxpayer.

"Raw fish" means fin fish and shellfish and includes, but is not limited to: crabs, shrimp, scallops, clams, oysters, sea cucumbers, salmon, herring, halibut, cod, flounder and pollock that have not been processed.

"Raw fish tax" means the tax levied on the sale or use of raw fish under this Chapter.

"Sale of raw fish" occurs without regard to whether delivery by the seller occurred directly or indirectly nor whether delivery of the fish occurred inside or outside the City if the fish are purchased for delivery, or are delivered, to a location inside the City at the time of sale. A sale of raw fish occurs within the City if the fish ticket issued by the buyer to the seller for the sale of raw fish is issued within the City. A sale also includes the performance of services within the City without regard to the place of sale of such services, and includes an event that occurs when a person within the City becomes directly or indirectly obligated to sell or convey property within the City, or to perform services within the City or to lease or rent to or permit the use of property within the City by another, including admissions to a place or event.

"Sale price" in the case of raw fish, includes any indirect consideration such as fuel or supplies furnished directly or indirectly by the buyer or offsets to the cash value for gear furnished, and includes post purchase or post season adjustments or bonuses.

"Sales Tax Administrator" or "Administrator" means the manager or the person designated by the manager as the sales tax administrator or the agent of the administrator.

"Seller" means a person or entity that has caught raw seafood product and sells it to a buyer.

"Taxpayer" is the seller of raw fish.

4.21.020 Imposition; rate.

There is levied and shall be collected a tax of two and a half percent (2.5%) on all sales of raw fish within the City of Dillingham. The tax levied under this Chapter is an obligation of the seller and collected by the buyer.

4.21.030 Exemptions - enumerated.

The following sales are exempt from the tax levied under this chapter:

- A. Sales of goods and services except raw fish.
- B. The sale of raw fish, for the sole purpose and use as bait, from one boat to another. This exemption does not apply to sales or purchases of raw fish by seafood processors.

C. The resale of raw fish in essentially the same form as when purchased if the tax under this chapter paid on the prior purchase was at fair market value for the fish under the circumstances of the prior purchase.

D. The sale of raw fish caught by the permit holder to the same permit holder for purposes of resale if:

1. the permit holder is licensed as a catcher-processor by the State; and
2. the permit holder purchases less than ten thousand (\$10,000) dollars annually of raw fish.

4.21.040 Exemption procedures.

A. No exemption certificate may be granted except under written application for the exemption on a form established by the City.

B. The burden of establishing any tax exemption is on the buyer.

4.21.050 Tax – computation.

The tax due under this chapter shall be computed by multiplying the primary gross sales value by two and a half percent (2.5%). The tax due on a sale shall be rounded to the nearest whole cent with fractions of one half cent and more rounded upward.

4.21.055 Tax- credits.

The amount of tax due as computed in accordance with section 4.21.050 shall be reduced by the amount of severance tax levied upon fish caught within the boundaries of another municipal corporation the sale of which is subject to tax under this Chapter.

4.21.060 Statement of tax.

A person required to collect a tax under this chapter shall provide the taxpayer with a statement of the amount of tax owing on any taxable transaction and shall retain a copy of such statement for a period of not less than five years following the due date of the payment to the City.

4.21.070 Obligation to pay tax.

A. The obligation of the tax is upon the seller. The buyer shall segregate from funds of the buyer an amount equal to the tax due on the sale. Funds required to be segregated under this section are taxes collected or required to be collected under this chapter.

B. Collection is enforceable, by the buyer, as a certified tax collector of the City, provided, however, that this shall not limit the liability of the person liable for the tax.

4.21.080 Determination of taxability - Liability for errors.

The collector shall determine initially whether a sale is taxable under this chapter. If the collector fails to collect the tax due on a sale because of an incorrect determination of taxability by the collector or for any other reason, the collector becomes liable to the City for the tax in the same manner as if the tax had been collected.

4.21.090 Tax funds held in trust.

All tax monies collected or segregated or required to be collected or segregated by the collector are funds of the City and shall be held in trust by the collector in a fund or account separate from all other funds and accounts of the collector until paid over to the City. Interest earned on such funds while held by the collector may be retained by the collector as compensation for segregating and protecting the funds of the City.

4.21.100 Location of sales made and services provided.

When the use tax arises on raw fish under Section 4.21.260 (C) because the raw fish caught or harvested within the City is transported by a person who intends to sell the fish to a buyer outside of the City, the buyer is deemed to be located within the City for purposes of the sale, and is required to collect the tax in the same manner as a buyer under Section 4.21.070. Such buyers are required to register with the City under Section 4.21.110 and are subject to the filing procedures and requirements set forth in this chapter.

4.21.110 Registration of sellers and buyers as tax collectors - Certification of registration.

A. All buyers of raw fish shall file an application for a certificate of registration on a form prescribed by the City not more than ten days after the date of commencing business within the City, or the opening of an additional place of business, provided no registration is required if the business conducted does not require the person to collect a tax under this chapter. The application must contain or be accompanied by:

1. The name and mailing address of the applicant;
2. The location at which the applicant will conduct its business and where transactions subject to the tax under this chapter will occur; if the applicant's business is to be conducted from one or more vessels, the name of the vessels and the general location or areas in which each vessel will operate;
3. If the applicant is a buyer of raw fish,
 - a. The applicant's Alaska Fisheries Business License number;
 - b. A copy of the applicant's most recent Alaska Fisheries Business License Tax filing;
 - c. A copy of the most recent statement provided the state of the amount of fisheries products the person expects to produce during the applicant's license year;
4. The applicant's Alaska Business License number;
5. A statement of the extent of property owned by the applicant in the City against which the tax liability of the applicant may be collected and other information with respect to description, location and value of the property which the City prescribes.

B. Upon receipt of a properly executed application, the sales tax administrator will issue a certificate of registration setting out the name of the registrant, its physical and its mailing addresses, and the place the registrant will be operating from a vessel. The certificate shall authorize the registrant to collect and enforce the collection of the tax required to be collected under this chapter. The certificate must be prominently displayed at the location set out in the certificate or upon the vessel named in the certificate. A separate certificate shall be issued for each vessel or location of an applicant.

C. A certificate of registration is non-assignable and non-transferable and must be surrendered to the sales tax administrator by the registrant to whom it is issued upon the registrant's ceasing to do business at the location or on the vessel named therein. If the business is continued at the same location, but there is a change in its form or organization such as a change of a single proprietorship to a partnership or corporation, or the admission or withdrawal of a partner, or other change, the registrant shall surrender the old certificate to the sales tax administrator with an application for a new certificate. If the business of a registrant is sold, leased or in any other manner transferred to another person, the registrant shall surrender the certificate to the sales tax administrator and the new owner, lessee or other successor to the business shall immediately apply for a new certificate.

D. If there is a change in location of a registrant's place of business, the registrant shall surrender the certificate for the old location to the sales tax administrator along with a statement of the new address. Upon receipt of the old certificate and the new address, the sales tax administrator shall issue a new certificate of registration showing the new location.

E. Before issuing a certificate of registration, the applicant may be required to post a bond, furnish a statement of net worth, or furnish such additional security as may be required by the sales tax administrator to insure full and prompt payment of taxes required to be collected under this chapter.

F. A person applying for a certificate of registration under this section thereby gives consent to an inspection by the City of the applicant's Alaska Fisheries Business Tax returns and other information or records filed by the registrant with the State of Alaska for the purpose of enforcement and administration of the provisions of this chapter.

4.21.120 Rulings and regulations.

A. The manager may promulgate and amend regulations and may prescribe the use of forms appropriate to the implementation of this chapter. Regulations promulgated by the manager are effective on the date they are promulgated unless a different date is indicated in the regulations; provided, all regulations are subject to repeal or revision by the Council at any time. Prior to promulgation, proposed regulations shall be submitted to the City attorney for review and comment. Upon promulgating a regulation or any amendment to an existing regulation, the manager shall submit the regulation or amendment to the Council at its next regular meeting.

B. If any person who is or may be required to pay or collect a tax under this chapter questions the application of this chapter to a transaction or other situation in which that person is involved or may become involved, the person may apply to the sales tax administrator for a ruling on the question. The sales tax administrator may rule on the question and may seek the advice of the city attorney on the question. Before a ruling of the sales tax administrator is effective or binding on the City, it must be signed by the manager.

C. Rulings having general applicability shall be considered by the manager for promulgation as a regulation.

4.21.130 Payment and remittance - Application of payments - Deduction.

A. Taxes required to be collected under this chapter during a calendar year are due and payable to the City within 30 days of the last day of the calendar quarter in which any transaction subject to tax under this Chapter has been made. For every calendar quarter in which a transaction subject to tax under this Chapter has been made, every collector shall file with the City on forms furnished by the City a return containing the following information:

1. Name and address of taxpayer;
2. Primary gross sales value (sometimes referred as a primary gross purchase value) of raw seafood product purchased or delivered within the City during the calendar quarter by pounds, average price per pound, and by species;
3. Nontaxable sales during the calendar quarter;
4. Taxes due during the calendar quarter;
5. Interest, penalties, deductions
6. Such other information as may be required on the form.

- B. The return shall be signed and its completeness and accuracy sworn to by the collector under penalty of perjury.
- C. All sales are presumed to be taxable. An exemption claimed for any sale must be proved or adequately explained by the collector with the submission of the return.
- D. The completed return, together with the remittance of the tax required to be collected during the calendar quarter, must be received by the City at the address designated on the return form within 30 days of the last day of every calendar quarter in which a transaction subject to tax under this Chapter has occurred.
- E. If the business is sold or transferred to another, whether voluntarily or involuntarily, the person filing the return shall provide on the form the name of the person to whom the business was sold or transferred.
- F. Any collector of raw fish sales tax shall be paid an amount equal to two percent (2%) of the gross raw seafood sales tax collected, provided that the tax return is filed and the tax is paid to the City on or before the fifteenth (15th) of each month immediately following the month in which the collection is made; provided, the amount deducted and retained may not exceed \$200.
- G. Amounts received with the return shall be applied in the following order:
1. Penalties due, beginning with the oldest penalty;
 2. Interest due, beginning with the interest due on the oldest quarter; and
 3. Taxes due, beginning with the taxes due from the oldest quarter.

4.21.135 Tax Refunds

- A. Any taxpayer from whom raw fish tax is collected and timely remitted to the city by a tax collector and who also has timely remitted property tax is eligible for a partial refund of raw fish tax. The amount of the refund is equal to fifty percent of the raw fish tax collected from the taxpayer up to a maximum refund of fifty per cent of the property tax paid by the taxpayer to the City.
- B. Any taxpayer:
1. from whom raw fish tax is collected and timely remitted to the city by a tax collector during the year for which a refund is requested; and
 2. who is not eligible for a refund under Section 4.21.135(A) above; and
 3. whose household income, assets, and financial resources fall within the eligibility standards for the food stamp program under 7 U.S.C. 2011 - 2025, as amended; and/or
 4. who has paid a reduced price annual fee for the taxpayer's fishing permit under AS 16.43.160(d) for the calendar year during which raw fish tax was collected from the taxpayer is eligible for a partial refund of fifty per cent of the tax paid under this Chapter.
- C. Any person entitled to a partial refund may obtain a partial refund from the City upon completion and submission of a refund application form to be provided by the City together with such supporting documentation as required by the City to establish eligibility for and the amount of the refund.
- D. An application for a fish tax refund shall be filed during the period that begins November 1 and ends December 31 of each year. Failure to submit a refund application by December 31 means that no refund is due to the taxpayer for that year.

(Additions are underlined; Deletions are in [brackets])

E. Applications for a refund under Section 4.21.135(B) above shall be treated by the city as confidential documents not subject to disclosure under Section 2.01.040 of this Code.

F. All refund amounts due to a taxpayer shall be paid by the City on or before March 15 each year. Should the City fail to pay any portion of a refund due interest shall accrue from the due date until the date paid at an annual rate of five per cent (5%).

G. The City may offset against any refund due to a taxpayer amounts owed to the City by the taxpayer for sales tax, port and harbor fees, personal property tax, utility charges or any other fines or fees. The amount so withheld shall be identified to the taxpayer in writing on or before February 15 of each year. If the taxpayer believes the offset amount is in error the taxpayer is entitled to an informal hearing before the city manager on or before March 14.

4.21.140 Penalties and interest.

A. A person who fails to file a return as required under this chapter or who fails to remit all the taxes due the City shall pay a penalty of five percent (5%) of the taxes due with a minimum penalty of \$100 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 of fifteen percent (15%); provided, the total penalty for a single calendar quarter shall not exceed three thousand dollars (\$3,000). The filing of an incomplete return shall be treated as the filing of no return.

B. Interest at the rate of ten and one-half percent (10.5%) per annum shall be paid on all amounts due the City that are not received by the City 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 three hundred dollars (\$300) for the first offense. A buyer, who, after notice, continues to conduct business without obtaining a certificate of authority to collect sales tax, is subject to a penalty of five hundred dollars for each subsequent offense. Such penalty must be paid before the 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 four hundred dollars (\$400) 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 person required to collect a tax under this chapter who fails to provide a written statement setting out the amount of the tax due on the transaction shall pay a penalty to the City equal to the amount of the tax due on the sale.

E. 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 City 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 one thousand dollars (\$1,000).

F. A person required to maintain records under the provisions of this chapter shall immediately notify the City 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 City 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.

4.21.150 Forced filing.

A. If a collector under this chapter fails to file a complete and accurate return or to pay over all the taxes due as required by this chapter, the sales tax administrator may make an estimate of the taxes due based upon any information available. The administrator shall file a return for such collector and shall provide a copy of the return to the collector with a request that the collector file a correct return along with payment of the taxes due. The administrator may require the collector filing the return to provide sufficient information to support the corrected return. If the collector 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 collector, it is determined that a greater amount was due, the collector shall be liable for payment of such additional amount. A forced filing may be made if the City is unable to ascertain the tax due to be remitted by a collector by reason of the failure of the collector to keep accurate records or to allow inspections of the collector's records, or of the collector's falsification of records.

B. A collector who disagrees with the determination of the administrator shown on the force filed return and refuses to file a corrected return may, within thirty (30) days of the date of mailing of the forced filing, appeal the ruling of the administrator as set out in DMC 4.21.210. A collector who files a corrected return under this section, but who is notified in writing by the administrator that taxes are due in excess of those admitted by the collector may appeal the ruling of the administrator as set out in DMC 4.21.210 but only if appealed within ten (10) days of the date of mailing of the notice from the administrator. Notice of the appeal must be received by the administrator within the time provided herein and be accompanied by payment under protest of the taxes, interest and penalty claimed by the administrator to be due.

4.21.160 Records - Investigation and audits.

A. Every person required to collect the tax imposed under this chapter shall maintain, keep and preserve such records, books and accounts of all sales made by the person as may be necessary to determine the amount of tax the person is obligated to collect and pay over to the City. Such records, books and accounts shall be preserved for a period of five (5) years following the date all taxes involved in the accounting period were required to be paid to the City.

B. For the purpose of ascertaining the correctness of a return or the amount of taxes owed when a return has not been filed, the sales tax administrator may conduct investigations, hearings and audits and to that end may examine any relevant books, papers, memoranda, records or other writings of any seller or buyer and may require the attendance and sworn testimony of any seller or buyer or any officer or employee of the seller or buyer at a hearing. Upon written demand by the sales tax administrator, a buyer or seller shall make available to the sales tax administrator in the office of the sales tax administrator such books, papers, memoranda, records and other written material as may be set out in the demand unless the sales tax administrator and the person upon whom the demand is made agree to presentation of such materials at a different place.

4.21.170 Liens.

A. The tax, interest, penalties and other costs due and owing under this chapter shall constitute a lien in favor of the City upon the property and other assets of the collectors and taxpayers liable for the payment of the tax, interest, penalties and other costs.

B. The lien imposed by this section arises and attaches at the time the collector purchases fish from the selling fishermen and continues until the entire amount due has been paid.

C. If delinquent sales taxes, including interest and penalties, are not paid within ten (10) days from the mailing of notice and demand for payment thereof, a notice of lien may be recorded in the appropriate district recorder's office. Once recorded, a lien arising under this section has priority over any other liens except those for special assessments or those granted priority by state or federal law.

D. An action to foreclose the lien created by this section shall be commenced and pursued in the manner provided for the foreclosure of liens in AS 09.45.170 - 09.45.220.

E. The remedy provided in this section is not exclusive and shall be in addition to all other remedies available to collect the taxes, penalties, interests and costs due under this chapter.

F. The failure to record a lien does not constitute a waiver or abrogation of any priorities, rights or interests of the City at law and in equity.

G. Fees for the administrative costs of filing notices of liens and releasing of liens shall be:

1. Filing of notices of lien: twenty-five dollars (\$25), plus recorder's office filing fee.
2. Release of liens: twenty-five dollars (\$25), plus recorder's office filing fee.

H. Upon full satisfaction of payment of all taxes, interest, penalties and costs due and owing to the City, the administrator shall file a certificate discharging the lien.

4.21.180 Accelerated returns.

A person who is required to file a return and pay taxes to the City who fails for more than thirty (30) days to file a return or pay the taxes due or who has, within a twelve (12) month period, filed or paid taxes late on two or more occasions may be required by the sales tax administrator to file and pay on a monthly basis; provided, the sales tax administrator shall provide to the person a hearing after reasonable notice of the sales tax administrator's intention to require more frequent filing and payment. The person required to file and pay on a monthly basis who fails to file and pay the full amount due within ten (10) days of the date required to such filing and payment or such a person who files late two or more times during a four month period may be required by the sales tax administrator to file on a weekly or more frequent basis after written notice of intent and a hearing as provided in this section.

4.21.190 Termination, sale or transfer of retail business.

A. A collector whose interest or substantial part thereof in a business registered or required to be registered under this chapter is sold, leased, assigned, or otherwise transferred either voluntarily or involuntarily to another person shall make a final tax return within twenty (20) days after the date of such transfer. The purchaser or other person acquiring the business shall withhold a portion of the purchase or lease money sufficient to pay any tax, interest and penalties which may be due, unless the seller displays a receipt from the sales tax administrator showing that all tax obligations imposed by this chapter, to the date of the sale, transfer or assignment have been paid in full.

B. A person who terminates his business without the benefit of a purchaser, lessee, successor or assign, shall make a final tax return and settlement of tax obligations within fifteen (15) days after such termination.

C. Any person who has filed a sales tax return shall be presumed to be making sales in succeeding quarters unless he or she files a subsequent return declaring the termination or transfer of the business.

4.21.200 Personal liability of corporate officers.

A. At the time that a corporate business becomes delinquent in paying the collected taxes, or fails to collect taxes and remit them to the City as required by this Chapter, any officer or other person having control or supervision of sales tax funds collected and held in trust or who is charged with the responsibility for the filing of returns or the payment of sales tax funds collected, segregated and held in trust, shall be personally liable for any unpaid taxes and interest and penalties due from the corporation. For the purposes of this section, any sales taxes that have been paid to the City but not collected shall be deductible from the sales taxes collected or required to be collected but not paid.

B. The officer or other person shall be liable only for taxes collected or required to be collected or which became due and payable to the City during the period he or she had the control, supervision, responsibility, or duty to act for the corporation described in subsection A. of this section, plus interest and penalties on those taxes.

C. This section does not relieve the corporation of its liability for payment of the tax due under this chapter or otherwise impair other tax collection remedies afforded by law.

D. Collection authority and procedures prescribed in this chapter apply to collections under this section.

4.21.210 Protest of tax by taxpayer.

A. If a taxpayer believes that a transaction is exempt or otherwise not subject to the tax imposed under this chapter, but the collector has determined the transaction to be subject to the tax, the taxpayer shall pay the tax to the collector under protest. A tax is paid under protest by stating to the collector that the tax is paid under protest and requesting the collector mark any sales slips, receipts, vouchers and other evidence of the sale to indicate that the tax is paid under protest. The taxpayer shall file with the collector and with the sales tax administrator a statement of protest on a form provided to the collector by the City. Failure to file a complete statement of protest with both the collector and the sales tax administrator within thirty (30) days of the date of the sale or to pay the tax constitutes a waiver of the protest and of any other right of the taxpayer to challenge the tax in any other forum. The taxpayer shall clearly set out on the form the terms and conditions of the sale, the amount of the sale, the quantity of fish, other property, or services involved, the location of the sale or other transaction or the place of the performance of the rental or services, and all other information necessary to determine whether the tax does or does not apply. The form shall include the names and mailing addresses of both the taxpayer and the collector and any other party involved in the transaction and must be signed by the taxpayer.

B. Upon receipt of a written protest, the collector shall forward the protest to the sales tax administrator along with any additional statements the collector believes may assist the sales tax administrator in determining the protest. Unless the collector records on the taxpayer's statement of protest facts different from those recorded by the taxpayer on the statement, forwarding the statement to the City by the collector constitutes a confirmation by the collector of the facts set out on the statement to the extent the collector has knowledge of such facts. The written protest must be forwarded to the sales tax administrator as promptly as possible, and in any case not later than thirty (30) days after delivery of the protest to the collector.

C. The sales tax administrator shall issue a written ruling on each protest within thirty (30) days of receipt of the protest from the collector or on such later date as may be required to insure full consideration of the issues raised in the protest. The burden of proof is on the taxpayer. The sales tax administrator may seek the advice of the City attorney on any protest. The ruling will be in writing and must set forth the reason for the grant or denial of the protest. The ruling will be sent to the collector and the taxpayer at the addresses given on the protest.

D. If a protest is granted, the sales tax administrator shall determine whether the tax protested has been received by the City from the collector. If the tax has been received, the sales tax administrator shall refund directly to the taxpayer the amount of the tax to be refunded. If the tax has not been received by the City, the collector shall be instructed to refund to the taxpayer the appropriate amount if the collector has actually collected the tax from the taxpayer. If the challenged tax was upon the sale of raw fish, and the collector has not yet paid for the fish, the collector shall make such adjustment as necessary to the accounts of the taxpayer to reflect the correct amount of the tax due. The collector and the taxpayer may make other arrangements for crediting to the taxpayer the amount of the refund if the collector and the taxpayer reach a mutual agreement as to such alternate procedure.

E. In the event a protest is denied, the taxpayer may, within thirty (30) days of the date of mailing of the notice of denial, appeal the denial to the manager if the manager is not acting as the sales tax administrator. The manager shall receive such additional information, whether written or oral, as the protesting taxpayer may desire to present. The manager may also receive such additional testimony as the sales tax administrator may present. The manager shall render a decision in writing and give notice of the decision to both the taxpayer and the collector. The decision of the manager, whether acting as the manager or as the sales tax administrator, is final and is subject to judicial review on appeal of the superior court under the applicable appellate court rules.

F. 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 of any other right of the taxpayer to challenge the tax, interest, penalty or other charge directly or collaterally in any other forum.

4.21.220 Protest of tax by collector.

A. If a collector believes that a transaction is exempt or otherwise not subject to the tax imposed under this chapter or believes that a penalty, interest or other charge is not owing but has been informed by the City that such transaction is subject to the tax imposed under this chapter or such penalty, interest or charge is owing, the collector may protest the tax by paying the tax owed to the City on or before the date due and filing with the City at the time of payment a statement of protest setting out all relevant facts and clearly explaining why the transaction taxed or the penalty, interest or charge made is exempt, not otherwise subject to the tax levied under this chapter or not owing. The payment and statement of protest must be received by the City not later than the thirtieth (30)th day following the date the tax was required to be collected from the taxpayer; or, if no tax was collected, the later of the occurrence of the challenged transaction or the date of the notice from the City that the transaction is taxable; or, if the protest is of a disallowance, charge levied, or similar action by the City, the date of the notice to the collector of the City determination. Failure to file a statement of protest and to pay the amount claimed by the City as owing within the time permitted under this subsection or other section of this chapter constitutes a waiver of the right to protest to the Manager or to appeal or otherwise challenge the tax, charge or determination in any judicial or other proceeding.

B. The sales 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 collector has the burden of proof. The sales tax administrator may permit or require the collector to provide additional information relevant to the protest. The sales tax administrator may seek the advice of the City attorney on any protest. The ruling on the protest must set forth the reason for the grant or denial of the protest. The ruling will be sent to the collector at the address given on the protest.

C. If a protest is granted, the sales tax administrator shall refund to the collector the penalty, interest or charge levied or the tax collected and paid over to the City that was on an exempt transaction or otherwise not subject to the tax levied or the interest, penalty or charge under this chapter. The collector shall immediately refund to each taxpayer from whom the tax was collected the amount of the tax improperly collected; provided, if the collector has failed to directly or indirectly collect the tax but has paid the tax to the City from its own account, the collector may retain the tax refund.

D. In the event a protest is denied, the collector may, within thirty (30) days of the date of the notice of denial, appeal the denial to the manager if the manager was not acting as the sales tax administrator on the protest. The manager shall receive such additional information whether written or oral, as the collector may desire to present. The manager may also receive such additional testimony and material as the sales tax administrator may present. The manager shall render a decision in writing and give notice of the decision of the collector. The decision of the manager, whether acting as the manager or as the sales tax administrator, 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 collector to challenge the tax, interest, penalty, or other charge directly or collaterally.

4.21.230 Refund of excess payment.

A. A taxpayer or collector who, through a clerical or similar error, pays a tax under this chapter that exceeds the amount actually due may receive a refund of the excess payment upon meeting the conditions set out in this section.

B. A taxpayer who has made an excess sales tax payment as set out in subsection shall be given a refund of the excess by the collector if the taxpayer

1. Notifies the collector of the excess payment;
2. Proves to the collector that an excess payment was made; and
3. Provides such notification and proof to the collector prior to the date the collector pays over to the City the taxes collected during the reporting period in which the claimed excess payment was made.

C. A taxpayer who has made an excess sales tax payment as set out in subsection who has been denied a refund by the collector, or who did not meet the requirements of DMC 4.21.230(B)(3) or who has made an excess use tax payment may file with the sales tax administrator for a refund of the excess payment. The taxpayer must file the request for the refund and satisfactory proof of entitlement with the administrator not later than the last business day of the calendar quarter following the quarter during which the claimed excess payment was made. The manager may establish a reasonable fee for processing refund requests under this subsection.

D. A collector who has made an excess tax payment as set out in DMC 4.21.230(A) shall be given a refund of the excess if the administrator receives written notices from the collector of the amount claimed as an excess payment. The administrator must receive the notice and satisfactory proof of the excess payment, in the form required by the administrator, not later than the last day upon which the collector may file a tax return under this chapter for the quarter following the quarter for which the claimed excess payment was made.

E. Upon approval of a refund to a collector, the City may pay the refund to the collector or authorize the collector to take the refund as a credit against future quarterly tax payments; provided, the amount taken as a credit in any one quarter may not exceed thirty percent (30%) of the taxes otherwise due from the collector for the quarter. No interest may be paid on the excess payment.

F. A claim for a refund of an excess payment to which this section applies is forever barred if notice and proof of the excess payment are not given within the time required.

4.21.240 Returns and Information Declared Confidential; exemptions.

Returns filed with the City for the purpose of complying with the terms of this Chapter and all data obtained from such returns are confidential, and such returns, and data obtained shall be kept from inspection by all private persons, except as necessary to investigate and prosecute violations of this Chapter. Nothing contained in this Section shall be construed to prohibit the delivery to a person or entity, or to their duly authorized representative, of a copy of any return or report filed by them, nor to prohibit the publication of statistics so classified as to prevent the identification of particular buyers or sellers, nor to prohibit the furnishing of information on the reciprocal basis to other agencies of the State of Alaska or of the United States concerned with the enforcement of tax laws.

4.21.250 Time extensions.

For good cause shown, the sales tax administrator may grant an extension of the time required for the performance of any act under this chapter. The extension shall be subject to such terms and conditions as the administrator finds appropriate. An application for an extension must be filed in writing before the date required for performance.

4.21.260 Use tax levied.

A. There is levied and shall be collected a use tax equal to the sales tax set out in Section 4.21.020 on the processing, storage, consumption, transportation, or other use of raw fish within the City if such fish has not been the subject of a transaction otherwise taxable under this chapter had the acquisition by the user been a purchase within the City. The tax shall be levied and collected in an amount equal to the rate of levy times the value of the property used.

B. A credit shall be allowed against the tax imposed by this section in an amount that the present user, the user's agent, bailer or donor has paid a sales or use tax or a severance tax with respect to such fish in any other state or political subdivision prior to the use of the fish in the City. The person who processes, stores, consumes, transports, or otherwise uses raw fish subject to taxation under this section is liable for the payment of the tax to the City and shall file a return, obtain a certificate of registration, and remit the taxes due in the same manner and subject to the same requirements for reporting, payment, interest, penalties, inspection of records, enforcement, administration and other applicable provisions of this chapter as are set out for the taxation of sales of raw fish.

C. Under this section, the act of transporting property within the City shall only be considered a taxable use when the property being transported is raw fish caught or harvested within the City

by a person who intends to sell the fish to a buyer, irrespective of whether the buyer is located within the City, and irrespective of whether the person transporting such raw fish has an agreement or obligation to sell the raw fish to any particular buyer at the time the transporting of the fish within the City occurs.

4.21.270 Authority to contract collection.

The manager may, with the consent of the city council, contract with a city or a private person to collect the taxes imposed by this chapter.

4.21.280 Enforcement.

A. If tax is not paid when due, the City may enforce the payment of the tax, interest and any penalties by any method available in law, including but not limited to the lien and sale of property of the collector or taxpayer and a personal action against the delinquent collector or taxpayer.

B. For the violation of any provision of this chapter the City may bring an action for civil penalties and for any violation or threatened violation an action for injunctive relief. An action for injunctive relief may be brought notwithstanding the availability of any other remedy. Upon an application for injunctive relief and a finding of violation or threatened violation of a provision of this chapter, the superior court shall grant the injunction. Each day that a violation continues is a separate violation.

C. For the violation of any provision of this chapter the City may bring a criminal action without regard to whether any civil remedy is available or has been sought or obtained.

4.21.290 Violation - Criminal enforcement.

A. Violation of any of the requirements of this chapter is a misdemeanor. For convictions of a violation of a provision of this chapter, a fine of not to exceed five hundred dollars (\$500) may be imposed; except, for a subsequent violation of any provisions of this chapter, whether similar to or different from the prior conviction, the maximum penalty that may be imposed is a fine of one thousand dollars (\$1,000) or imprisonment for not to exceed thirty (30) days, or both, if the subsequent conviction is for a violation that occurred after, but within three years of the conviction for the prior violation.

B. Each day upon which a violation of this chapter continues is a separate offense.

C. The City may recover taxes, interest, civil penalties and other amounts due in a civil action independent of or in addition to any criminal action filed.

Section 2. Effective Date. This ordinance shall be effective as of June 1, 2012 but only if approved by the voters of Dillingham in a special election to be held on or about April 10, 2012.

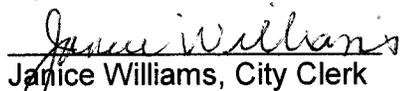
PASSED and ADOPTED by a duly constituted quorum of the Dillingham City Council on February 2, 2012.

SEAL:



Alice Ruby, Mayor

ATTEST:



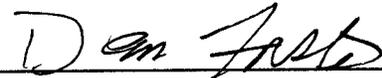
Janice Williams, City Clerk

Subject: An ordinance of the Dillingham City Council levying a 2.5% tax on sales of raw fish subject to voter ratification

Agenda of: February 2, 2012

Council Action: Council approved introduction of Ordinance No. 2012-01 at their January 19, 2012 Regular City Council Meeting.

Manager: Recommend approval.

City Manager: 
Dan Forster

Route To:	Department / Individual	Initials	Remarks
X	Finance / Carol Shade		
X	City Clerk / Janice Williams		

Fiscal Note: Yes _____ No X Funds Available: Yes _____ No _____

Other Attachment(s):

- Resolution No. 2010-10, adopted February 11, 2010, authorized the Mayor to submit a petition to the State of Alaska Local Boundary Commission (LBC)
- Copy of Notice of Public Hearing advertisement that appeared in the January 25, 2012 edition of The Delta Discovery

Summary Statement.

This ordinance was introduced at the January 19, 2012 Regular City Council meeting.

The City Council filed its petition with the Local Boundary Commission June 14, 2010, proposing a 2.5% raw fish tax in conjunction with annexation, rather than relying upon increased State revenue, to enhance its financial sustainability.

Resolution No. 2012-07, adopted January 19, 2012 approved scheduling a special election for April 10, 2012 for voter approval of annexation and ratification of an ordinance establishing a tax on sales of raw fish. A request was submitted to the Dept. of Justice January 25, 2012 requesting preclearance review of the special election.

CITY OF DILLINGHAM, ALASKA

RESOLUTION NO. 2010-10

A RESOLUTION OF THE DILLINGHAM CITY COUNCIL AUTHORIZING THE MAYOR TO SUBMIT A PETITION TO THE ALASKA LOCAL BOUNDARY COMMISSION FOR ANNEXATION OF COMMERCIAL FISHING WATERS TO THE CITY OF DILLINGHAM – USING THE LOCAL VOTER APPROVAL PROCESS

WHEREAS, fishery resources and the commercial fishing and seafood processing industries are the backbone of Dillingham's economy and integral to many residents' livelihoods and way of life;

WHEREAS, the Dillingham population more than doubles during the peak fisheries months of May through August as summer visitors come to town to commercial fish in Nushagak Bay and other places in Bristol Bay or work in Dillingham-based seafood processing plants; and

WHEREAS, these many people beyond Dillingham residents and fishermen use the City-maintained harbor, docks, boat ramps, restrooms, bath house, and benefit from trash-hauling, street and grounds maintenance needs, etc. harbor, docks, and boat launches; and

WHEREAS, this annexation and its accompanying local severance and sales tax on raw fish will provide more revenue to the City of Dillingham to help pay for services and infrastructure that the region's commercial fishermen and fleet use while in town and will help make the community more financially sustainable; and

WHEREAS, services determined to be essential city services under 3 AAC 110.970 can be provided more efficiently and more effectively by the City of Dillingham than by another existing city or by an organized borough on an area wide basis or non-area wide basis; and

WHEREAS, the territory proposed for annexation is compatible in character with Dillingham; and

WHEREAS, the territory proposed for annexation is contiguous to the existing boundaries of Dillingham and would not create enclaves in the expanded Dillingham boundary; and

WHEREAS, the proposed expanded boundaries of the City includes the Nushagak Commercial Salmon District and Wood River Sockeye Salmon Special Harvest area as justified by the application of the standards in 3 AAC 110.090 – 3 AAC 110.135; and

WHEREAS, annexation to the City is in the best interests of the State under AS 29.06.040(a) and 3 AAC 110.135;

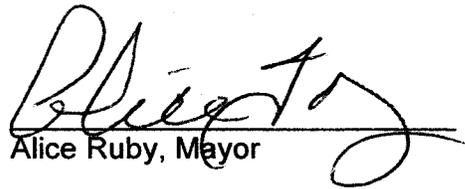
NOW, THEREFORE, BE IT RESOLVED that The Petitioner, the Dillingham City Council, is authorized to file a petition for annexation by local voter approval to the Alaska Local Boundary Commission, of the Nushagak Commercial Salmon District, and, the Wood River Sockeye Salmon Special Harvest area.

The Mayor or City Manager is designated as the representative of the City for all matters relating to the annexation proceeding.

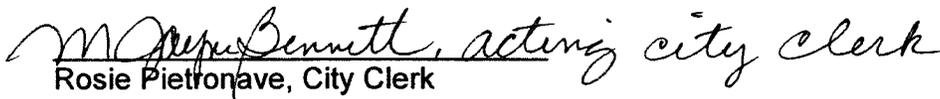
The annexation will be on the terms and conditions in the Petition, as modified during the Local Boundary Commission review and approval process, and then approved by the voters of Dillingham.

ADOPTED by the City of Dillingham City Council on February 11, 2010.

SEAL:


Alice Ruby, Mayor

ATTEST:


Rosie Pietronave, City Clerk

CLASSIFIEDS

For Sale

New Toyostoves Laser 73 \$2100. Laser 56 \$1650 Laser 30 \$1275. GCI Call 545-1616. (10/10-cnx)(ch)

Jeff Sanders Sells Woodstoves. 3 Blade eco-fans \$140 ppd. (907) 543-2379. (11/5/26-cnx)

FIREWOOD CUT & SPLIT OR ROUND LOGS 545-2877 (8/11/23-cnx)

Plastic sled runners available in 4 colors, any length, and many widths. We ship anywhere there is a post office or airport. 543-2379 Ask for Jeff. (26/10/5-cnx)

Freshly remodeled Trailer for Sale: \$25,000 OBO. 543-2802. (8/8/25-cnx)

For Sale: 3 ea. 10 by 45 Atco vans for storage \$2000.00 each or OBO. 543-2750. (16/7/6-9/21; cnx)

For sale: 1996 GMC Jimmy SUV, \$2500.00 OBO 543-2750. (18/12/14-cnx)

Brand new, Alaskan quality, modular homes set up on your lot in Bethel and most villages. See our website, www.alaskasbesthome.com, or call Continental Industries at (360) 886-9933. (27/12/21-5/9)

For Sale: 1991 Chevy 2500 series 4x4 Regular Cab Truck. Runs good, muffler and body, needs work. 45,000+ miles. \$5,000.00; Well-McLain gold oil burner, never been used \$2,700.00; 7,000 gallon single wall tank \$4,000.00; 15,000 gallon single wall horizontal tank \$5,000.00; Lot of 35ft. electric poles \$50.00 each; Napakiak Corporation, contact office 589-2227 or 2250. (55/12/21-cnx)

Wanted

Wanted: Used desktops and laptops working or not. Some repairs done. 545-0929 evenings. (13/11/10-cnx)

For Rent

OUTSIDE STORAGE SPACE FOR RENT. EQUIPMENT, BOATS OR VEHICLES. NEAR BOAT HARBOR. FENCED IN AREA. 543-2402. (16/3/17-cnx)

Fully Equipped Do-It-Yourself Shop Available. Rent by the day or hour. Joe's Shop 545-0920. (14/11/11-cnx)

STORAGE UNITS. 5 sizes available. Unclutter your home. Store summer gear and infrequently used items. Celeration. 543-4008. (17/11/11-cnx; 5/19-cnx)

Heated storage units for rent, secured building. \$75 & \$120 per month, depending on size. Inquire at AC Quickstop 543-2640. (20/12/2-cnx)

Small Apartments available. Some utilities paid. 543-2750. (7/9/1-22; cnx)

Hawaii Condo for Rent Sweet Retreat for your vacation. Located in Sunny Kihei, Maui, Hawaii. 2 Bed, 2 Bath, Ground floor, handicap and elder friendly. Across the street from Sugar Beach, 5 min. to grocery and restaurants. Only 15 min. from Kahalui Airport. Internet, BBQ, TV, Phone and Pool included. Reasonable Rates. Ask for unit 1A when you call 800-927-7672. (61/3/2-cnx)

Duplex for Sale - Tundra Ridge. Each side: 2 BR/ 1 BA. 2,450 total sq. ft. One side leased at \$1,484 with tenant paying all utilities; other side newly available. Lg. treed lot overlooks lake. Two new boilers / boilermates, ten new Northern windows, new appliances, vinyl & carpeting. Lots of storage. Appraisal in process. Info/viewing - Phil @ 907-523-4870. (59/12/28-cnx)

Large unfurnished building for rent, approximately 40x60 on commercial lot. Perfect for mechanic business. AS IS, \$900/month. 545-3134. (18/1/18-21)

Real Estate

For Sale 23,500 square foot lot downtown location on Chief Eddie Hoffman Highway (or State Highway)

across from Fire Station. Serious offers only. 907-543-3552. (23/7/28-cnx)

For sale. Manufactured Home \$85,000. 6 bedrooms/3 bathrooms/fully furnished. Potential gross income \$4,800 per month. Turnkey. Recover your investment in 3 years. 543-3552. (24/7/28-cnx)

BRAND NEW HOUSE FOR SALE 3 BED, 1 BATH AT 120 CRANBERRY ROAD. 12,000 SQ. FT. LOT. 1 STORY, 1400 SQ. FT. NICE ARCTIC ENTRY AND DECK. BOILER HEAT, ENERGY EFFICIENT. ALL MAJOR APPLIANCES INCLUDED. SEE BY APPT. ONLY. CALL 543-4483. \$270K. (42/2/9-cnx)

For Sale: 28 by 36 Duplex. Needs work, must be moved \$30,000.00 OBO 543-2750. (14/7/6-9/21; 9/28-10/28)

For Sale: 24 by 56 bunk house 4 plex. \$35,000.00 OBO. 543-2750. (12/7/6-9/21; 9/28-10/28)

House for Sale: Great Tundra view. 3 bedrooms, den, 3 bathrooms, 2 car heated garage, Open Living/Dining/Kitchen area, family room. 2852 Sq Ft. Appraised for \$375,000. Serious Offers only. 605-745-4222. (30/1/18-cnx)

New Duplex For Sale 1200 SQ FT EA SIDE, LG DECKS, LOCATED AT 160 HOFFMAN SUB. BOILER HEAT, ALL APPLIANCES INCLUDED. ENERGY EFFICIENT, 2 BEDROOM, 1 BATH EACH UNIT. EXCELLENT INVESTMENT AT \$445,000. CALL 543-4483 OR 545-1672 FOR APPT. TO VIEW. (41/12/14-cnx)

Employment

Job Opening: Naparyalruar Store Manager

Requirements: Experienced in General Store Purchasing Operations, Gas & Fuel Department, Inventory, Work Place Safety, Supervise and Schedule up to ten (10) employees working rotations, must be familiar with Quick Books, Billing and Receiving Payments, assist Napakiak Corporation Bookkeeper as needed and other duties as directed by the General Manager and the Board of Directors. **Experienced Applicants:** Starting Salary \$20.00 per hour up to (8) hours per day, matching pension plans, sick and annual leaves, start after 90 days probationary period.

BUILDING FOR SALE

907-543-3264



SMALL HOUSE FOR SALE AS IS FIRST \$7500.00 TAKES IT AL-READY ON THE TRAILER 543-3264



FOR SALE - REMOVED OFF A TENDER BOAT. BEST OFFER GETS IT TO YOUR YARD! Call today 543-3264

This position is not necessarily restricted to the requirements listed above; applicants familiar with General Store Operations may apply, there will be a required 90 day probationary period, starting salary at \$15.00 per hour. Applications available at Napakiak Corporation Office. Call 589-2227/2250, closing date February 29, 2012. (133/12/28-2/29)

Marketing Representative I United Utilities, Inc., affiliated with United-KUC and Unicom, has an opening for a Marketing Representative in Bethel. This position is responsible for marketing and sales, computer data entry and providing total customer support. Hours are 9:00 a.m. through 6:00 p.m. Monday through Friday. Applicants must: have a high school diploma or GED; a minimum of six (6) months customer service and/or sales experience preferred; excellent communications skills; be skilled with computer operations in a PC environment; be able to prioritize, multi-task, and work independently; and must be able to maintain attendance

continued on page 18



NOTICE OF PUBLIC HEARING

The City of Dillingham will hold a **Public Hearing on Thursday, February 2, 2012, at 7:00 p.m. in the City Council Chambers** for the purpose of taking comment from the public on:

- Ordinance No. 2012-01, An Ordinance of the Dillingham City Council Levying a 2.5% Tax on Sales of Raw Fish Subject to Voter Ratification.

This ordinance shall be effective as of June 1, 2012, but only if approved by the voters of Dillingham in a special election to be held on April 10, 2012.

- Ordinance No. 2012-02, An Ordinance of the Dillingham City Council amending the budget by adopting budget amendment No. 1, and appropriating funds for the FY 2012 City of Dillingham Budget

If you have any questions, please forward them to the City Clerk's Office at 842-5212 or email cityclerk@dillinghamak.us.



PUBLIC NOTICE

The Dillingham City Council adopted the following ordinance at their January 19, 2012 regular council meeting:

- Ordinance No. 2011-09, An Ordinance of the Dillingham City Council amending DMC Sections 6.08.020 A and B to allow licenses bars and eating establishments to serve alcohol on Super Bowl Sunday and when New Year's Eve falls on a Sunday

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