

ORDINANCE NO. 2013-10

AN ORDINANCE OF THE DILLINGHAM CITY COUNCIL AMENDING CHAPTER 4.40 TO CREATE A DENIED SERVICES LIST THAT WILL TERMINATE ELIGIBILITY FOR MUNICIPAL SERVICES FOR CERTAIN INDIVIDUALS WHOSE ACCOUNTS ARE PAST DUE AND TO CREATE PROCEDURES FOR ADDING SUCH PERSONS TO THE LIST AND TO AMEND NUMEROUS REFERENCES TO THE LIST IN THE CODE FOR CLARITY AND UNIFORMITY

WHEREAS, the City desires to establish a Denied Services List that will better allow it to limit access to city services for people and business that are delinquent or have past due accounts with the City; and

WHEREAS, the City desires to implement uniform procedures for adding delinquent persons and citizens to the Denied Services List; and

WHEREAS, the current Code contains many references to a similar list but is unclear, repetitive, and needs clarification in order to allow fair and impartial enforcement while also protecting the rights of all persons and business potentially subject to service termination;

NOW, THEREFORE, BE IT ENACTED BY THE DILLINGHAM CITY COUNCIL:

Section 1. Classification. This is a code ordinance.

Section 2. Amendment of Section 2.42.100. Section 2.42.100 of the Dillingham Municipal Code is hereby amended to read as follows: (Additions are **underlined and emboldened** and deletions are shown as ~~strikethrough~~.)

2.42.100 Denial of facilities, equipment or services.

- A. When moorage facilities are crowded, the port director may refuse mooring facilities.
- B. The port director may refuse moorage to any vessel that is or may become a fire hazard or otherwise become a menace to the safety or welfare of other boats or their occupants.
- C. As a condition to permitting a vessel access to mooring facilities, the port director may require satisfactory evidence of seaworthiness of the vessel or evidence of adequate insurance coverage.
- D. The port director may refuse moorage facilities or other services or equipment to any person or vessel in violation of the provisions of this chapter or delinquent in the payment of any authorized fee or charge. **Any person, business, or vessel that is delinquent in the payment of any authorized fee or charge may be added to the Port's delinquent list pursuant to Rule 34.1 of the Port of Dillingham Terminal Tariff No. 400 and/or to the City's Denied Services List using the procedures set forth in Chapter 4.40 of this Code.**

E. An owner or operator of a vessel may not fail or refuse to remove the vessel from the small boat harbor and any facilities in the Port of Dillingham, after the port director has notified the owner or operator of the vessel that moorage or mooring facilities are refused, terminated or withdrawn.

1. Notice of refusal, withdrawal, or termination of facilities or other services or equipment to a vessel that is not registered may be given verbally by the port director and shall be effective immediately.

2. Notice of refusal, withdrawal, or termination of moorage facilities to a registered vessel may be given by the port director verbally or in writing. Verbal notice relating to services and equipment shall be effective immediately. Verbal or written notice personally delivered to the owner or operator relating to the refusal, withdrawal, or termination of mooring facilities shall be effective twenty-four hours after the time of delivery unless a later effective date is specified in writing.

3. Written notice of refusal, withdrawal, or termination of mooring for a registered vessel may be mailed to the address designated on the registration information or may be posted in a conspicuous place on the vessel. A written notice that is posted or mailed shall be effective at four-thirty p.m. on the fifth day following posting or mailing of such notice. (Ord. 08-05 § 2 (part), 2008.)

Section 3. Amendment of Section 4.16.060. Section 4.16.060 of the Dillingham Municipal Code is hereby amended to read as follows: (Additions are **underlined and emboldened** and deletions are shown as ~~strikethrough.~~)

4.16.060 Penalties—Enforcement.

Any person who has effective control of a business required by this chapter to have a Dillingham business license and each business required by this chapter to have a Dillingham business license shall be subject to a civil penalty of one hundred dollars up to and including the forty-fifth day of unlicensed operation. For each day of operation without a valid Dillingham business license beyond the forty-fifth day, the amount of the penalty shall be one hundred dollars per day, with each day of unlicensed operation constituting a separate offense. Any surcharge required to be imposed under AS 12.55.039 shall also be assessed in addition to any penalty.

As used in this section, the following persons have effective control of a business: its proprietor or proprietors, general partners in case of a partnership, the president, and each person or entity owning more than thirty percent of the voting stock in case of a corporation; and in case of a limited liability company the manager of the company, or if there is no manager, all members of the company.

In addition to this monetary penalty, the city may seek an injunction in the Superior Court requiring the business, or each person with effective control of the business, to obtain the required business license and also recover compensatory damages, including full, actual, reasonable attorneys' fees, from each such person. Upon application for an injunction under this section, the Superior Court shall issue the injunction.

The city may also have any person who has failed to obtain the business license required by this chapter, or any vessel owned by any such person, placed on the delinquent list of the port of Dillingham **and/or to the City's Denied Services List using the procedures set forth in Chapter 4.40 of this Code.**

Section 4. Amendment of Chapter 4.20. Chapter 4.20 of the Dillingham Municipal Code is hereby amended by repealing Sections 4.20.240, 4.20.250, and 4.20.260.

4.20.240 Delinquent list.

~~The city shall maintain an accurate list of each seller who is in violation of this chapter by reason of their failure to file a return or failure to remit or collect taxes which should have been collected or remitted. The city shall provide written notice to each person on the delinquent list of the city's intent to terminate their eligibility for municipal utility and port and harbor services if the delinquency is not cured within thirty days of the mailing of the notice. Said notice shall also include the name and telephone number of the municipal employee to contact if the delinquency is contested, and notice of the availability of an informal hearing to resolve contested matters prior to the proposed date for termination of services. (Ord. 00-03 § 1 (part), 2000.)~~

4.20.250 Failure to cure delinquency.

~~A. If a seller fails to either cure their delinquency, or request an informal hearing in order to contest placement on the delinquent list, within the time specified in the notice required by Section 4.20.240, the city may proceed to terminate the seller's municipal utility and port and harbor services in accordance with the provisions for termination of these services contained in this code or any applicable tariff.~~

~~B. If the seller fails to either cure their delinquency or request an informal hearing in order to contest placement on the delinquent list within the time allowed, the city may publish the names of delinquent taxpayers in a newspaper of general circulation within the city. (Ord. 00-03 § 1 (part), 2000.)~~

4.20.260 Effect of contest of delinquency.

~~If a seller requests an informal hearing in order to contest placement on the delinquent list, municipal services shall not be terminated until after the informal hearing has been held, and then only in the event the delinquency remains uncured following the conclusion of the informal hearing.~~

Section 5. Amendment of Section 4.30.020. Chapter 4.30.020 of the Dillingham Municipal Code is hereby amended to read as follows: (Additions are **underlined and emboldened** and deletions are shown as strikethrough.)

4.30.020 Procedures, generally.

A. Every undertaking of the city involving the expenditure of city money shall be in writing in the form of a purchase order, credit card, travel voucher or of a contract, as may be appropriate, and no officer or employee of the city shall have authority to enter into any oral agreement involving the expenditure of money. The city manager and city clerk shall sign all contracts on behalf of the city, and the city manager and the treasurer shall sign all purchase orders.

B. The city manager shall establish procedures for emergency purchases and may provide for a petty cash fund and purchases.

C. The treasurer shall examine all payrolls, bills, claims and other demands of the city, and shall issue no warrant for payment unless the claim is in proper form, correctly computed and approved, and is legally due and payable and appropriation has been made thereof which has not been exhausted and unless there is sufficient money in the city treasury to make payment.

D. The city shall not contract for purchase, or issue purchase authorization for any supplies, materials, equipment or services for the city, or contract for the construction, repair or improvement of city facilities with any person and/or business on the delinquent list maintained by the Port of Dillingham pursuant to Rule 34.1 of the Port of Dillingham Terminal Tariff No. 400 or on the **Denied Services List** delinquent list maintained by the city pursuant to Section **4.40.010** ~~4.20.240~~ of this code.

E. The city shall not sell surplus, obsolete or unusable personal property of the city or personal property seized by the city for payment of debts owed to the city to any person and/or business on the delinquent list maintained by the Port of Dillingham pursuant to Rule 34.1 of the Port of Dillingham Terminal Tariff No. 400, or on the **Denied Services List** delinquent list maintained by the city pursuant to Section **4.40.010** ~~4.20.240~~ of this code.

Section 6. Amendment of Section 4.36.050. Chapter 4.36.050 of the Dillingham Municipal Code is hereby amended to read as follows: (Additions are **underlined and emboldened** and deletions are shown as ~~strikethrough~~.)

4.36.050 Persons and/or businesses ineligible to purchase personal property.

The city shall not sell surplus, obsolete or unusable personal property of the city or property seized by the city for payment of debts owed to the city to any person and/or business on the delinquent list maintained by the Port of Dillingham pursuant to Rule 34.1 of the Port of Dillingham Terminal Tariff No. 400 or on the **Denied Services List** delinquent list maintained by the city pursuant to Section **4.40.010** ~~4.20.240~~ of this code.

Section 7. Amendment of Chapter 4.40. Chapter 4.40 of the Dillingham Municipal Code is hereby amended by adding the following sections:

4.40.010 Denied Services List.

A. The City shall maintain an accurate list of all persons, businesses, and vessels which, for reasons specified in this Code or the Tariff of the Port of Dillingham, have been designated for inclusion on the Denied Services List. The Denied Services List includes, but is not limited to, those persons, businesses, and vessels included on the "Delinquent List" established by Rule 34.1 of the Port of Dillingham Terminal Tariff.

B. A person, business, or vessel may be included on the Denied Services List for any reason specified in this Code or in the Port of Dillingham Terminal Tariff. In addition to the reasons identified elsewhere, a person, business, or vessel may be designated for inclusion on the Denied Services List if the person, business, or vessel has a past due account with the City in excess of \$100 for more than thirty days as a result of any of the following:

1. Real or personal property taxes
2. Dock and harbor fees
3. Public Safety Enforcement Fees
4. Failure to obtain or submit fees for a city business license
5. Failure to obtain a certificate of authority to collect sales taxes or to properly file sales tax returns
6. Failure to timely remit amounts due for municipal water and waste water

4.40.020 City services not to be provided.

- A. No person, vessel, or employee or agent of a business that is included on the Denied Services List shall be permitted to use City services, including the following:
1. Dock and harbor access
 2. Water and waste water
- B. No person or business that is included on the Denied Services List may be awarded a City contract, purchase property from the City, or be hired as a city employee.
- C. The City Manager may waive the restrictions in this section if the listed person, business, or vessel owner enters a repayment plan with the City and is not delinquent on the repayment plan at the time the contract, purchase, or employment is executed.

4.40.030 Notice and opportunity to cure required. Before listing any person, business, or vessel on the Denied Services List, the city shall provide written notice to the person, business, or owner of the vessel of the city's intent to terminate eligibility for City services if the reason for inclusion on the List is not cured within thirty days of the date the notice is mailed. The notice shall also include the name and telephone number of the municipal employee to contact if the delinquency is contested, and notice of the availability of an informal hearing before the Finance Director to resolve contested matters prior to the proposed date for termination of services.

4.40.040 Failure to cure.

- A. If the person or business fails to either cure the delinquency or request an informal hearing to contest placement on the Denied Services List within the time specified in the notice required by DMC 4.40.030, the city may terminate the municipal services.
- B. If the person or business fails to either cure the delinquency or request an informal hearing in order to contest placement on the delinquent list within the time allowed, the city may publish the names of delinquent persons and entities in a newspaper of general circulation within the city.

4.40.050 Effect of contest of delinquency. If a person or business requests an informal hearing in order to contest placement on the Denied Services List, the person or business shall not be placed on the List until the hearing has been held and a determination made that the reason for inclusion on the List is valid under this Code, the Port of Dillingham Tariff, or the laws of the State of Alaska. If such a determination is reached, the person or business shall be placed on the Denied Services List unless the delinquency is cured within ten days of the informal hearing.

4.40.060 Removal from List. Any entity or person which is included on the Denied Services List shall not be removed until the City Manager, after consulting with the Finance Director, declares in writing that the person or business has cured the delinquency that required the person to be included on the List.

Section 8. Amendment of Section 8.04.090. Chapter 8.04.090 of the Dillingham Municipal Code is hereby amended to read as follows: (Additions are underlined and boldened and deletions are shown as ~~strikethrough~~.)

8.04.090 Provision of other services—Denied Services List Delinquent list.

- A. No person shall be permitted to obtain municipal utility or port and harbor services from the city unless they demonstrate to the satisfaction of the city that they:

1. Have entered into a contract with a refuse collection service for the collection of refuse from all real property or improvements thereto of which they are the owner or occupant, and that the refuse collection is capable of disposing of refuse in strict accordance with the provisions of this chapter; or
2. Have in place adequate facilities to collect, store and transport refuse themselves from all real property or improvements of which they are the owner or occupant, in strict accordance with the provisions of this chapter; or
3. Have complied with Section 8.04.050(C).

~~B. Any person who has not demonstrated compliance with the provisions of this section by August 1, 1998, or who subsequently violates any provision of this chapter may be placed on the City's Denied Services List using the procedures set forth in Chapter 4.40 of this Code, on the delinquent list. The city shall provide written notice to each person on the delinquent list of the city's intent to terminate their eligibility for municipal utility and port and harbor services if the delinquency is not cured within thirty days of the date of the notice. Said notice shall also include the name and telephone number of the municipal employee to contact if the delinquency is contested, and notice of the availability of an informal hearing to resolve contested matters prior to the proposed date for termination of services.~~

~~C. If a person fails to either cure their violation or request an informal hearing in order to contest placement on the delinquent list within the time specified in the notice required by subsection B of this section, the city may proceed to terminate that person's municipal utility and port and harbor services in accordance with the provision for termination of those services contained in this code or any applicable tariff.~~

~~D. If a person requests an informal hearing in order to contest placement on the delinquent list, municipal services shall not be terminated until after the informal hearing has been held, and then only in the event the violation remains uncured following the conclusion of the informal hearing.~~

Section 9. Amendment of Section 13.20.016. Section 13.20.016 of the Dillingham Municipal Code is hereby amended to read as follows: (Additions are underlined and emboldened and deletions are shown as strikethrough.)

13.20.016 Shutoff of persons on the Denied Services List delinquent list.

The sewer may be disconnected to any premises owned or occupied by a person or business who has been placed on the delinquent list maintained by the Port of Dillingham pursuant to Rule 34.1 of the Port of Dillingham Terminal Tariff, or on the Denied Services List maintained by the City using the procedures set forth in Chapter 4.40 of this Code, any delinquent list maintained by the city, and who has been provided notice and an opportunity for an informal hearing in accordance with the provisions of this code, and who has failed to cure the delinquency within a period of sixty days after notice of their placement on any delinquent list was mailed.

Section 10. Amendment of Section 14.20.021. Section 14.20.021 of the Dillingham Municipal Code is hereby amended to read as follows: (Additions are underlined and emboldened and deletions are shown as strikethrough.)

14.20.021 Shutoff of persons on delinquent list.

The water supply may be shut off to any premises owned or occupied by a person or business who has been placed on the delinquent list maintained by the Port of Dillingham pursuant to

Rule 34.1 of the Port of Dillingham Terminal Tariff, or on the Denied Services List maintained by the City using the procedures set forth in Chapter 4.40 of this Code. any delinquent list maintained by the city, and who has been provided notice and an opportunity for an informal hearing in accordance with the provisions of this code, and who has failed to cure the delinquency within a period of sixty days after notice of their placement on any delinquent list was mailed.

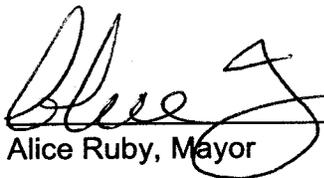
Section 11. Effective Date. This ordinance is effective upon passage.

PASSED and ADOPTED by a duly constituted quorum of the Dillingham City Council on

June 6, 2013

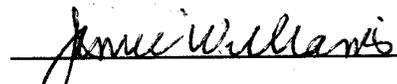
SEAL:





Alice Ruby, Mayor

ATTEST:



Janice Williams, City Clerk

Subject: An Ordinance of the Dillingham City Council Amending Chapter 4.40 to Create a Denied Services List that will Terminate Eligibility for Municipal Services for Certain Individuals Whose Accounts are Past Due and to Create Procedures for Adding Such Persons to the List and to Amend Numerous References to the List in the Code for Clarity and Uniformity

Agenda of: June 6 , 2013

Council Action: This ordinance was introduced May 23, 2013 and is scheduled for adoption June 6, 2013.

Manager: Recommend approval.

City Manager: Rose Loera
Rose Loera

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

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

Other Attachment(s):

- Public Hearing was advertised in the May 30, 2013 edition of Bristol Bay Times.

Summary Statement.

This ordinance was vetted through the Code Review Committee and is being recommended for adoption. Staff added language to services would be denied if the person was in arrears over \$100 and over 90 days for any of the following items unless they were currently on a repayment plan:

1. Real property taxes
2. Personal property taxes
3. Dock and harbor fees
4. Public safety enforcement fees
5. Business license/sales tax
6. Water and wastewater

The services denied for nonpayment of the items listed above would be:

1. Dock and harbor fees
2. Water and waste water

References in the code to a delinquent list have been replaced with denied services list for consistency. A person would receive a letter 30 days in advance, notifying them that they could lose access to a service for nonpayment of a debt. The committee suggested reviewing other services to be denied access after the ordinance had been in place for a year.



**NOTICE OF A PUBLIC HEARING
Public Hearing on Ordinance Nos. 2013-07,
2013-08, 2013-09, and 2013-10**

City Of Dillingham will hold a Public Hearing on Thursday, June 6, 2013, at 7:00 P.M. in the City Council Chambers for the purpose of taking comment from the public on the following ordinances:

- Adopt Ordinance No. 2013-07, An Ordinance of the Dillingham City Council Amending Section 4.20.050 of the Dillingham Municipal Code, Sales Tax Exemption
- Adopt Ordinance No. 2013-08, An Ordinance of the Dillingham City Council Amending Chapter 4.16 of the Dillingham Municipal Code to Require a City Business License Only if Sales Exceed Ten Thousand Dollars in a Calendar Year and Exempt Sales of Goods and Services Made by Persons Not Required to Obtain a Business License
- Adopt Ordinance No. 2013-09, An Ordinance of the Dillingham City Council Authorizing Disposal of Municipal Property to Delta Western by Lease
- Adopt Ordinance No. 2013-10, An Ordinance of the Dillingham City Council Amending Chapter 4.40 to Create a Denied Services List that will Terminate Eligibility for Municipal Services for Certain Individuals Whose Accounts are Past Due and to Create Procedures for Adding Such Persons to the List and to Amend Numerous References to the List in the Code for Clarity and Uniformity

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