

## CITY OF DILLINGHAM, ALASKA

## ORDINANCE NO. 2013-11

**AN ORDINANCE OF THE DILLINGHAM CITY COUNCIL AMENDING CHAPTER 4.15, REAL AND PERSONAL PROPERTY, SECTION 4.15.185 TO AMEND THE INTEREST RATE APPLICABLE TO DELINQUENT PROPERTY TAXPAYERS IN AN ECONOMIC DISASTER YEAR, ADDING SECTION 4.15.365 REPAYMENT PLAN, AND AMENDING CHAPTER 4.20, SALES TAX, SECTION 4.20.265, PERMITTING THE CITY TO ENTER INTO REPAYMENT PLANS WITH DELINQUENT TAXPAYERS**

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BE IT ENACTED BY THE DILLINGHAM CITY COUNCIL:

**Section 1. Classification.** This is a code ordinance.

**Section 2. Amendment of Section 4.15.185.** Section 4.15.185 of the Dillingham Municipal Code is hereby amended to read as follows: (Additions are underlined and **emboldened** and deletions are shown as strikethrough.)

**4.15.185 Disaster declaration**

Upon declaration of the city council of an economic disaster in any year, a taxpayer shall not be required to pay the penalty for late payment of real or personal property taxes, shall not be subject to force filing fees for personal property taxes under Section 4.15.100, and shall be afforded a one-half reduction in interest owed **shall be assessed a reduced interest rate of three percent interest** under Section 4.15.180 for taxes due for real or personal property during the calendar year that the economic disaster declaration is made; provided that, prior to October 30th of that year, or one month after the economic disaster declaration is made, whichever is later, the **taxpayer enters into a repayment plan agreement as set forth in DMC 4.15.365 and does not default on the repayment plan.** ~~taxpayer enters into an agreement with the city on forms provided by the city to pay the tax and interest due to the city in quarterly or more frequent installments. If a taxpayer fails to pay two or more payments as agreed under any such agreement, the full penalty, force filing fees and interest which would have accrued under Section 4.15.180 shall be due and owing to the city immediately after the second missed payment as if no payment had been made. For the year 2001, taxpayers may apply for the waiver of penalty, force filing fees and for a reduction in interest for payment of real and personal property taxes due for 2001 under this section on or before December 31, 2001.~~

**Section 3. Amendment of Section 4.15.230(C)(2)(b).** Section 4.15.230(C)(2)(b) of the Dillingham Municipal Code is hereby amended to read as follows: (Additions are underlined and **emboldened** and deletions are shown as strikethrough.)

C. Collection by Distraint and Sale.

1. **Persons Subject to Enforcement.** If, at any time a taxpayer is more than six months delinquent in any of the sales or personal property taxes levied by the city due the city,

he/she shall be subject to the enforcement procedures provided in this chapter, which are in addition to any other enforcement procedures already provided for and is not exclusive.

2. Distraint. The lien of personal property taxes and other nonreal taxes may be enforced by distraint and sale of the personal property of the person assessed. The procedure shall be as follows:

a. Demand shall be made of the person assessed by sending him/her a notice of the amount of tax due, the penalty and interest and the total and notice to the effect that if the taxes and all penalty and interest are not paid by a date certain which date shall not be less than thirty days from the date of mailing, that his/her personal property shall be subject to distraint and sale. The notice shall be sent by certified mail, return receipt requested or may be served in person with return of the person making service. The notice shall be signed by the city clerk.

b. If no payment is made within the time specified or in accordance with any repayment plan authorized by this chapter ~~extension agreed to in writing between the parties~~, the city clerk shall issue a warrant directed to an enforcement officer of the city to be designated by the city manager, direct him to seize, levy upon, distraint, and sell by public auction such personal property of the person assessed as the tax may have been levied upon, and that if the same is not sufficient to satisfy the tax, penalty, interest, costs, and expenses of sale, such warrant may authorize seizure, levy, distraint and sale of such other personal property of the person against whom the tax was assessed as may be sufficient to satisfy such tax, penalty, interest, costs and expenses of sale.

i. No sale of any property may be made without at least fifteen days' notice being given by publishing a notice of the sale at least two times in a newspaper of general circulation within the city, or if there is no such newspaper, by posting within the times stated a notice in seven public places within the city, and by mailing by certified first class prepaid mail a copy of the notice to the person assessed.

ii. Sale. The sale of such property shall be made at public auction and such personal property shall be sold to the highest bidder for cash. All sales of personal property shall be made at a time of day to be fixed by the city clerk in such notice, and the same shall be fixed between the hours of ten a.m. and five p.m. of the day of the sale, and the sale may be adjourned by the city clerk from day to day for want of purchasers of sufficient bids, or if for any valid reason the city clerk is prevented from attending at the time and place set for the sale, the sale may be adjourned and continued from day to day if necessary until all of such personal property has been sold to pay the costs and expenses provided in this chapter, and the tax, penalty and interest in full.

iii. From the proceeds of the sale which shall convey all the right title and interest of the person assessed, shall be paid, in the following order: the actual expenses of sale, tax, penalty, interest, and other costs including attorney's fees.

iv. Schedule of Costs. The following shall be the schedule of costs and attorney's fees:

(A) If redemption is made prior to sale:

(1) Actual costs of seizing and preserving the property;

(2) Actual costs of publication and giving notice;

(3) Attorney's fees in the amount of twenty percent of the first one hundred dollars, but with a minimum of ten dollars, fifteen percent of the next five hundred dollars and ten percent thereafter.

- (B) If no redemption is made before the property is sold:
- (1) All costs stated above plus any actual accruing costs;
  - (2) Attorney's fees in addition to those stated of fifteen percent of the first one hundred dollars but with a minimum of ten dollars, five percent of the balance.

v. Any remaining sums shall be returned to the person assessed, or if not claimed within six months shall become the property of the city, and sale is forever barred.

vi. The city clerk shall apply the proceeds of the sale in the manner set forth, and shall keep a record of all such sales and all such proceedings, and shall keep on file the returns of the city clerk relating thereto, and in all cases of sale of personal property, the city clerk shall, if requested, give the purchaser a bill of sale on behalf of the city under his/her hand.

D. General Foreclosure. The city shall bring one general foreclosure proceeding in rem against the property included in the foreclosure list. If the owner is unknown, the property is proceeded against as belonging to "unknown owner." (Ord. 01-12 § 1 (part), 2001.)

**Section 4. Amendment of Section 4.20.265.** Section 4.20.265 of the Dillingham Municipal Code is hereby amended to read as follows: (Additions are underlined and **emboldened** and deletions are shown as strikethrough.)

A. A seller and the City may agree to enter into a repayment plan. No repayment plan shall be valid unless agreed to by the parties in writing. ~~who is delinquent may cure their delinquency by agreeing to a repayment plan signed by both the City of Dillingham and the seller. Extended payment arrangements in the form of the repayment plan may be granted to a seller for a period not to exceed two years.~~

The repayment plan contract will meet the following requirements:

- ~~1. The seller has not been placed on the delinquent list in the previous three calendar years.~~
- ~~2. The seller has not been in default on a repayment plan in the previous three calendar years.~~
- ~~3. The seller agrees to pay twenty percent down payment of the tax, interest, and penalty amount due. The down payment shall be applied first to penalty, then to accumulated interest, and then to the tax owed.~~
- ~~4. The seller agrees to pay the balance of the tax and interest owed in equal monthly installments over a period not to exceed two years.~~
- ~~5. The seller will provide a personal guarantee of the obligations under the repayment plan if the seller is a corporation or limited liability entity.~~
- ~~6. The seller agrees to pay all future tax bills in accordance with the provisions of this section.~~
- ~~7. The seller provides a security interest in the form of a sales tax lien to be recorded at the time the repayment plan is signed for the full amount of the delinquency including accrued interest and penalty.~~

~~B. Interest on repayment plans shall be at the rate of six per cent (6%) per annum on the amount of tax due provided that if the seller fails to make one or more payments at the time agreed under the repayment plan the full amount of interest owed under Section 4.20.220 shall be due and owing on the entire remaining balance.~~

**B. A seller shall not be eligible to enter a repayment plan if:**

**1. The seller has defaulted on a repayment plan in the previous two calendar years.**

**C. The repayment plan shall include a secured promissory note that substantially complies with the following terms:**

**1. The seller agrees to pay a minimum of ten per cent down payment of the tax, interest, and penalty amount due. The down payment shall be applied first to penalty, then to accumulated interest, and then to the tax owed.**

**2. The seller agrees to pay the balance of the tax and interest owed in monthly installments over a period not to exceed two years.**

**3. Interest at a rate of 6% shall accrue on the principal sum due. Interest shall not apply to penalties owed or to interest accrued at the time the repayment plan is executed or accruing during the term of the repayment plan.**

**4. The seller agrees to provide a personal guarantee of the obligations under the repayment plan if the seller is a corporation or limited liability entity.**

**5. The seller agrees to pay all future tax bills in accordance with the provisions of this section.**

**6. The seller agrees to provide a security interest in the form of a sales tax lien for the entire unpaid balance of the promissory note to be recorded by the city at the time the repayment plan is signed. The seller shall be responsible for the cost of recording the tax lien.**

**GD. If a seller fails to pay one or more payments as required by the repayment plan agreement, agreed, the seller shall be in default and the entire amount owed at the time of default shall become immediately due. City will consider the repayment plan to be no longer valid. The City will send the seller a notice of default, that their repayment plan is no longer in force. The City may immediately proceed to foreclose on the sales tax lien or to take any other remedy available under the law including placing the seller on the City's Denied Services List using the procedures set forth in Chapter 4.40 of this Code.**

**Section 5. Amendment of Chapter 4.15.** Chapter 4.15 of the Dillingham Municipal Code is hereby amended by adding a new section 4.15.365 to read as follows:

**4.15.365 Repayment Plan**

A. A delinquent taxpayer and the city may agree to enter a repayment plan. No repayment plan agreement shall be valid unless agreed to by the parties in writing.

B. Only persons who would be eligible to enter a repayment plan under DMC 4.20.265(B) shall be eligible for a repayment plan under this section. A repayment plan agreement executed under the authority of this chapter must include substantially the same terms as sales tax repayment plans as required by DMC 4.20.265(C), except the delinquent taxpayer shall not be required to agree to provide a security interest in the form of a lien as required by DMC 4.20.265(C)(6).

C. If a property owner and the City execute a valid repayment plan and the property owner does not default prior to the time the annual foreclosure roll is prepared, the property shall not be placed on the foreclosure roll for that year. In the event a property is excluded from the annual foreclosure roll as provided in this subsection, the City retains every right provided by law to foreclose on the property in the event of a default on the repayment plan.

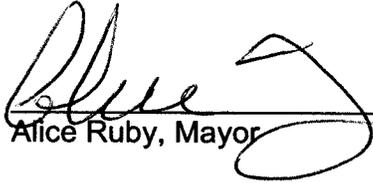
D. If a taxpayer fails to pay one or more payments as agreed, the taxpayer and subject property shall be in default and the entire amount owed at the time of default shall become

immediately due. The resulting delinquency shall be considered to have occurred in the year of the default on the payment plan, regardless of the year or years in which the tax accrued. The City will send the taxpayer a notice of default. The City may then foreclose on the property or take any other remedy available under the law including placing the seller on the City's Denied Services List using the procedures set forth in Chapter 4.40 of this Code.

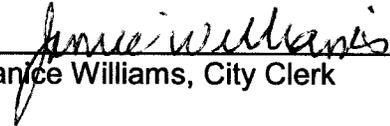
**Section 6. Effective Date.** This ordinance is effective as of the date of passage.

PASSED and ADOPTED by a duly constituted quorum of the Dillingham City Council on June 13, 2013

SEAL:

  
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Alice Ruby, Mayor

ATTEST:

  
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Janice Williams, City Clerk

