

CITY OF DILLINGHAM, ALASKA

RESOLUTION NO. 2012-58

**A RESOLUTION OF THE DILLINGHAM CITY COUNCIL AUTHORIZING THE CITY ATTORNEY TO INVESTIGATE AND FILE SUIT AGAINST JAMES BINGMAN FOR UNPAID SALES TAX**

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WHEREAS, the City of Dillingham ("City") taxes all sales, rents, and services provided within the City, including rental of real property; and

WHEREAS, James Bingman owns and operates multiple rental units within the City for which he charges rent to tenants, and which may operate under the name "Bayview Terrace"; and

WHEREAS, Mr. Bingman is required under Section 4.20.090 of the Dillingham Municipal Code to obtain a certificate of authority to collect sales tax, to collect the city tax for rentals within the City, and to remit the tax to the City on a monthly basis; and

WHEREAS, Mr. Bingman has failed to obtain a certificate of authority and to file sales tax returns as required by Section 4.20.115 of the Dillingham Municipal Code since at least January 2011, and previous filings are inconsistent, appear to under-report taxable sales, and claim unexplained exemptions; and

WHEREAS, Mr. Bingman is doing business in the City of Dillingham; and

WHEREAS, the City has previously advised Mr. Bingman of the need to collect and remit sales tax and obtain a city business license; and

WHEREAS, despite said notice from the City, Mr. Bingman continues to make taxable sales in Dillingham without collecting and remitting sales tax; and

WHEREAS, pursuant to Section 4.20.180, the City estimates that Mr. Bingman owes approximately \$146,992.84, inclusive of penalties and interest as of September 17, 2012, in unpaid sales taxes and related costs and fees; and

WHEREAS, Mr. Bingman owns taxable real property within the City limits of Dillingham; and

WHEREAS, Mr. Bingman has failed to pay the full amount assessed by the City for his 2011 property taxes; and

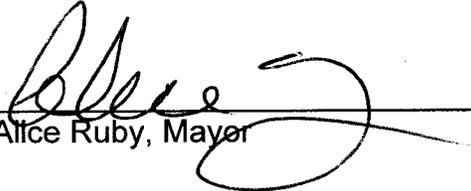
WHEREAS, Mr. Bingman is responsible for paying the unpaid taxes, penalties, and interest in their entirety;

NOW, THEREFORE, BE IT RESOLVED by the Dillingham City Council:

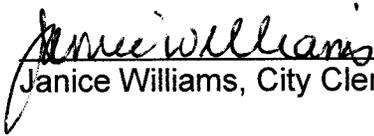
1. The City Attorney is authorized to investigate and file suit against James Bingman, Bayview Terrace, and any other entity owned by Mr. Bingman that is operating within the City of Dillingham and to recover all tax, penalty and interest and secure all relief to which the City may be entitled.

PASSED and ADOPTED by the Dillingham City Council on October 4, 2012.

SEAL:

  
Alice Ruby, Mayor

ATTEST:

  
Janice Williams, City Clerk



City of Dillingham Information Memorandum No. R2012-58

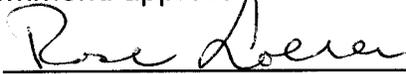
Subject: A Resolution of the Dillingham City Council authorizing the City Attorney to investigate and file suit against James Bingman for unpaid sales tax

Agenda of: October 4, 2012

City Council Action:

Manager: Recommend approval

City Manager:

  
Rose Loera, City Manager

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

Fiscal Note: Yes \_\_\_\_\_ No X Funds Available: Yes \_\_\_\_\_ No \_\_\_\_\_

Other Attachment(s): Letter to James Bingman dated September 18, 2012

**Summary Statement.**

Mr. Bingman is out of compliance under several sections of the Dillingham Municipal Code, referencing obtaining a certificate of authority to file sales tax returns, and filing and remitting the sales tax to the City. The Finance Department has been in contact with Mr. Bingman over the last several months. In addition to his delinquency on Property taxes, he has been negligent in filing his sales tax. We have corresponded with Mr. Bingman to no avail, and hence have resorted to preparing a force file document for past due sales tax and filing a lien with the Recorder's office.

Patrick Munson, City Attorney:

Regarding past and future practice, the City's Attorney haven't been involved with the City's small claims collection efforts, to the best of his knowledge. The Council has not approved a suit in those matters. However, this will be a lawsuit claiming well over one hundred thousand dollars in potential damages, and is unlike the routine collection matters that occur all the time. So for large lawsuits like this one, the City's Attorney has and presumably will continue to get specific approval before filing suit, but those instances are so rare that it should not be a significant burden.

The City's last major sales tax lawsuit was against David Gladden in 2001 (Resolution No. 2001-35).

**BOYD, CHANDLER & FALCONER, LLP**  
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September 18, 2012

Jim Bingman  
d/b/a Bayview Terrace  
P.O. Box 82  
226 Birch Lane  
Dillingham, AK 99576

RE: Unpaid debts to the City of Dillingham

Dear Mr. Bingman,

This letter addresses the numerous outstanding obligations you owe to the City of Dillingham.

**1. Unpaid sales tax**

On August 1, 2012, the City of Dillingham asked you to provide complete and/or updated returns and supporting documentation for all taxable sales (specifically including apartment rentals) made by you and/or your company, Bayview Terrace, for each month from January 2007 until the present. You failed to respond to our request. Accordingly, the City has been forced to estimate the amount of sales tax owed for rentals during this period based on all the information available to it. DMC 4.20.180.

The attached spreadsheet shows estimated sales tax figures for the rental properties you and/or your company own within the City of Dillingham. For each of these properties, you have either not remitted sales tax at all or appear to have underreported taxable sales. Based on the information available to the City, including property tax records showing the number of rental units, the expected total monthly income from these properties at full capacity is approximately \$40,200.00. Given the extremely tight rental market in Dillingham, the City estimates that your properties are at least 90% occupied. You have not responded to our request to identify any relevant exemptions, nor provided any information that would support adjusting this estimate downwards for tax purposes.

Therefore, the City estimates that the total amount of taxable sales for all rental properties owned by you and/or Bayview Terrace is \$36,180 per month. The amount of sales tax due (6%) on that amount is \$2,170.80 per month. For the period of January 2011 until the present, during which you have not filed returns at all, the amount of unpaid sales tax due is \$41,245.20. For the period between January 2007 and December 2011, during which you filed returns reporting taxable sales that are substantially lower than previous years' tax returns, and which are not

Jim Bingman  
September 18, 2012  
Page 2 of 3

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consistent with the City's knowledge of your rental properties, the amount of unpaid sales tax due is \$68,613.96, exclusive of penalties and interest. This represents the amount of sales tax that would be due under the 90% capacity estimate, less sales tax you remitted previously but which the City believes was substantially underreported.

The total principal of unpaid sales tax for the period of January 2007 to the present is therefore \$109,859.16. In addition, interest (10.5% per annum, per DMC 4.20.220) is due in the amount of \$29,491.72 as of September 17, and is still accruing. Penalties (5% of unpaid tax, per DMC 4.20.210.B) in the amount of \$5,492.96 are also due. Finally, the City has incurred costs in excess of \$2,149.00 for attorney and other filing fees due to your unpaid taxes.

The City has therefore estimated the total sales tax obligation jointly owed by you and your company to be \$146,992.84. We have filed a lien against your real and personal property for this amount as provided by law. DMC 4.20.270.

By law, you have thirty (30) days to file accurate returns, supported by satisfactory records, indicating a lesser liability. DMC 4.20.180. If you fail to produce such records and documentation by October 19, 2012, this estimate will become final. After that date, you will no longer have the opportunity to challenge the amount owed to the City. The City will then sue you to collect the amount, and a court will order you to pay the amount owed, plus substantial costs for attorney's and other fees. A court may also order one or more of your properties sold in order to satisfy the obligation. I cannot stress enough how important it is for you to contact me immediately if you want to avoid this.

## **2. Unpaid Real and Personal Property Tax**

In addition, the City has previously informed you of the substantial real and personal property taxes you owe for 2011. As of September 7, 2012, the amount due was \$21,385.84. In April, you indicated you would pay the amount due, but we have not received payment. You must pay this amount immediately, or contact me to arrange a payment plan. If you do not, we will have to place you on the foreclosure list and foreclose on one or more of your properties in order to satisfy that obligation as well.

## **3. Unpaid Municipal Utilities**

Your municipal utility account is also extremely past due. The City intends to terminate your eligibility for municipal utility, port and harbor service if the delinquency is not cured by October 19, 2012. DMC 4.20.240. As of today, the payment due on the account is \$6,295.03. You should contact me at the office of the City Attorney if you contest this delinquency. You

Jim Bingman  
September 18, 2012  
Page 3 of 3

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may request an informal hearing to resolve contested matters prior to the proposed date for termination of services.

#### **4. Failure to Obtain a Business License**

Finally, you have still not applied for a City of Dillingham business license as required by law. DMC 4.16.010. You must do so. We understand you do not believe you are required to obtain such a license, but the law is very clear and the penalties for non-compliance are severe: you may be fined up to one hundred dollars per day for every day you have not had a City business license. DMC 4.16.060. According to City records, you have been unlicensed since 2008, meaning the civil fine for your ongoing violations will be in excess of \$150,000 if the City is forced to pursue this matter in court. A court will also enter an injunction ordering you to obtain a license.

Mr. Bingman, it is time to resolve these matters. The City has an obligation to its citizens to enforce its laws and it intends to pursue this matter fully. We recently completed another lawsuit dealing with the same issues. The court rejected arguments nearly identical those you have offered in the past, ruling that the City has every right to seize and sell the properties of people who refuse to pay City taxes. We would like to avoid doing so in your case. Please contact me at the phone number or address above as soon as possible to discuss payment options.

Sincerely,

BOYD, CHANDLER &  
FALCONER, LLP

By:



Patrick W. Munson

PWM/lkr  
Enclosures