

CITY OF DILLINGHAM, ALASKA

ORDINANCE NO. 2022-04(S)

AN ORDINANCE OF THE DILLINGHAM CITY COUNCIL AMENDING TITLE 4 OF THE DILLINGHAM MUNICIPAL CODE LEVYING AN EXCISE TAX ON SEAFOOD PRODUCTS IMPORTED FOR PROCESSING IN DILLINGHAM

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 seafood landed in waters of Bristol Bay adjacent to Dillingham; 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, the anticipated need for infrastructure improvements related to commercial fishing with limited decreased grant assistance from both state and federal; 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 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 and imported into the City of Dillingham for processing is estimated to range between \$15,000,000 and \$25,000,000 annually; and

WHEREAS, the Dillingham City Council believes it to be in the best interests of the residents of Dillingham to adopt a seafood processing excise tax to raise revenue so the City may continue to adequately support the fishing industry and for other public purposes.

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

Section 1. Classification. This is a code ordinance.

Section 2. Amendment of Title 4. Title 4 of the Dillingham Municipal Code is hereby amended by adoption of a new Chapter 4.27, Seafood Processing Excise Tax, to read as follows:

Chapter 4.27

SEAFOOD PROCESSING EXCISE TAX

Sections:

4.27.010	Definitions
4.27.020	Levy of Tax
4.27.030	Registration Required
4.27.040	Tax Rate
4.27.050	Exemptions
4.27.060	Collection and Administration
4.27.070	Enforcement and Penalties
4.27.080	Excise Tax Return Verification
4.27.090	Confidentiality
4.27.100	Penalties and Interest
4.27.110	Dedication of proceeds
4.27.120	Protest of tax—Procedure

4.27.010 Definitions.

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

“City” means City of Dillingham.

“Harvester” means a person, company, corporation, or other entity engaged in the business of severing or harvesting natural resources. It includes persons who harvest seafood products outside the boundaries of the City and transfer those seafood products for delivery and processing at locations within the City provided that the sales made by such harvesters are not already subject to the City Raw Fish Tax. It does not include persons who harvest seafood products for subsistence or sport uses.

“Seafood Processing” or “Processed” means purchased for heading, gutting, cleaning, filleting, canning, freezing, glazing, packaging, or otherwise preserving a seafood product.

“Seafood Processor” means any person or business entity engaged in seafood processing within the City boundaries, except for personal or subsistence purposes.

“Seafood Products” means any raw finfish, groundfish, shellfish, mollusks and other commercial products of the sea.

4.27.020 Levy of tax.

There is levied, on any Seafood Processor engaged in Seafood Processing in the City, an excise tax on all Seafood Products for which no tax has been collected under the provisions of the City Raw Fish Tax. The tax rate shall be the applicable rate as set forth in subsection 4.27.040.

4.27.030 Registration Required.

All Seafood Processors, except those exempted under section 4.27.050, must register with the City and hold a valid City Business License as set forth in Section 4.16 of DMC.

4.27.040 Tax rate.

The tax levied by this Chapter shall be at the rate of **\$0.003 per purchased pound** of Seafood Products within the corporate limits of the city. Said levy rate will be reviewed annually to ensure fair process and amended by the city council at any time by resolution if cause is justified.

4.27.050 Exemptions.

- A. Seafood Processors who process less than ten thousand pounds of Seafood Products are exempt from taxation under this chapter.
- B. The first ten thousand pounds of Seafood Products subject to this tax purchased from a Harvester by a Seafood Processor not exempt under subsection A are exempt from taxation under this chapter.
- C. **The specific poundage of fish taxed by Bristol Bay Borough. This shall be determined by the City, using the average weight for that year of the species' (provided by the Alaska Fish and Game), based on price of fish paid to Bristol Bay Borough with documentation of sale, location, price, species, and payment of taxation.**
- D. Any person who harvests Seafood Products strictly for personal or subsistence use, and does not sell any Seafood Products harvested are exempt from any provision of this chapter.

4.27.060 Collection and Administration.

- A. Every Seafood Processor who makes payments for a seafood product subject to excise tax shall submit to the City an annual seafood processing excise tax return, containing the following information:
 - 1. The number of pounds of Seafood Product purchased from Harvesters during the preceding twelve (12) months;**
 - 2. The number of pounds of Seafood Product exempt from tax; and
 - 3. The name and location of the Seafood Processor
- B. **The return along with all taxes due the City for the year must be received by the City on or before December 31st for the preceding twelve (12) month period.**
- C. Taxes payable thereunder shall be remitted to the City's finance department on or before the time required, the tax shall not be deemed paid until the draft or check is honored in the usual course of business, nor shall the acceptance of any sum by the City's finance department be an acquittance or discharge of the tax unless the amount paid is the full amount due. The return shall be filed with the City finance office after notation by that office upon the return of the amount actually received from the taxpayer.

- D. If a complete return is filed with the entire tax remitted including penalties and interest within the time allowed, the processor may retain three (3) percent of the total tax due to cover the costs of administration of the tax; provided, the amount deducted and retained may not exceed three hundred dollars (\$300).

4.27.070 Enforcement and Penalties.

- A. A person who fails, refuses, or neglects to file an excise tax return in compliance with this chapter shall, in addition to any other penalties provided by law, be liable for a penalty of ten (10) percent of the tax.
- B. If any taxpayer fails, neglects or refuses to file an excise tax return as and when required under this chapter, the city finance department is authorized to determine the amount of tax payable based on historical data or the best information reasonably available to the City, together with any penalty and/or interest assessed under the provisions of this chapter, and by mail to notify such taxpayer of the amount so determined, which amount shall therefore become the tax and penalty and/or interest and shall become immediately due and payable.

4.27.080 Excise Tax Return Verification.

The City Manager or his/her designee may:

- A. Require a Seafood Processor or harvester, or any agent or employee of this person, to furnish any additional information reasonably necessary to compute the amount of the tax or to determine if a tax is due;
- B. Examine the books, records, and files of any such person;
- C. Conduct hearings and compel the attendance of witnesses and the production of books, records, and papers of any person; and
- D. Make an investigation or hold any inquiry reasonably necessary to a disclosure of facts as to:
 - 1. The amount of pounds of Seafood Product delivered or imported into the City for processing; and
 - 2. The purchaser of the Seafood Product

4.27.090 Confidentiality.

Information and materials in the possession of the City which disclose the particulars of the business or affairs of then payer of taxes under this chapter will be kept confidential by the City except in connection with an official investigation by the City or other agency enforcing the laws of the City or the State.

4.27.100 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 ten (10) percent of the taxes due with a minimum penalty of one hundred dollars if no return is filed. The total penalty for a single calendar quarter shall not

exceed three thousand dollars. The filing of an incomplete return shall be treated as the filing of no return.

B. Interest at the rate of six percent per annum shall be paid on all amounts due the city that are not received by the city as required under this chapter. 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 for the first offense. A seafood processor who, after notice, continues to conduct business without registering as required by Section 4.27.030 is subject to a penalty of five hundred dollars for each subsequent offense. Each day the purchaser conducts business without registering shall constitute a separate offense. If the city determines that a registered processor has previously violated this chapter, the registered purchaser is subject to the same penalty for violations committed prior to the registration. A certificate of registration shall not be issued or renewed if the purchaser has not paid all fines, penalties, and other obligations to the city.

4.27.110 Dedication of proceeds.

The net proceeds from the excise taxes levied by this chapter shall be used exclusively for city operation and school purposes on a basis determined annually by the City Council.

4.27.120 Protest of tax—Procedure.

A. In the event a processor believes their transaction to be exempt, they may secure from the City a certificate of protest, which shall be filled out by the parties of interest and delivered to the City with the amount of the disputed tax.

B. The certificate shall show the respective names and addresses of the processor, the nature of the claim of exemption, and such other information as may be prescribed by the City.

C. All certificates of protest shall be delivered to the City within five days prior to the date of the regularly called City Council meeting.

D. All parties of interest shall be advised in writing of the date the protest will be heard.

E. At the date of the next regularly called City Council meeting a public hearing will be held with an opportunity for all parties of interest to be heard.

F. The council will rule on each protest, and send to the parties of interest a notice that their claim has been allowed or disallowed, within thirty days after receipt of the certificate of protest by the City. If the claim has been allowed, a refund, with six percent annual interest from the date of receipt of tax payment, shall be remitted with the notification. The decision of the City shall be rendered in writing and shall be final, subject to judicial review.

Section 3. Amendment to Section 1.20.040

That Dillingham Municipal Code Section 1.20.040 - Minor offense fine schedule is amended to by the addition of new language to read as follows:

Code Section	Offense	Penalty/Fine
4.27.030	Failure to register as a processor of seafood products.	\$300
4.27.060	Failure to file seafood processor excise tax return.	\$1000
4.27.060	Falsifying seafood processor excise tax records.	\$1000
4.27.080	Failure to allow inspection of records.	\$500

Section 4. Effective Date. This ordinance shall be effective as of XXX 1, 2024.

Section 5. Repeal of Chapter 4.22. Chapter 4.22 of the Dillingham Municipal Code is hereby repealed in its entirety.

PASSED and ADOPTED by a duly constituted quorum of the Dillingham City Council on May 4, 2023.

Alice Ruby, Mayor

[SEAL]

ATTEST:

Greta Hayden-Pless, City Clerk