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MEMORANDUM

TO: Mark Lynch, Acting City Manager
Dillingham City Council



FROM: Brooks Chandler
City Attorney

DATE: February 3, 2022

RE: Draft Seafood Processing Tax

You asked why the draft processing tax ordinance does not use the same approach of establishing a rate of taxation based on wholesale price of seafood similar to the Bristol Bay Borough ordinance. This was done as a precautionary measure to reduce the chances a legal challenge to the ordinance would be mounted claiming a tax based on the wholesale price was a sales tax subject to voter approval. I was concerned about this because the Bristol Bay Borough ordinance used as a model was placed before the voters of Bristol Bay for approval. I thought adopting a similar tax and not placing it before the voters for approval would stick out like a sore thumb and invite legal challenges.

This was not done with either the tobacco tax or the marijuana tax because there is an Alaska Supreme Court case specific to a tobacco tax based on the wholesale price which held that was an excise tax not subject to voter approval. Bragg v. Matanuska Susitna Borough, 192 P.3d 982 (Alaska 2008). It would be possible to structure a fish processor tax based on a tobacco tax like set up but my understanding was that the Committee wanted to use the Bristol Bay Borough ordinance as the model.

Another reason for the difference was simplicity in calculation. But this was based on the faulty assumption that all of the processing occurring in Dillingham was of sockeye and incidental catches of chinook salmon. Apparently, that is not the case making a flat per pound rate less simple to administer than I had assumed.

Let me know if the finance committee or council would prefer to pivot to a tobacco like tax ordinance structure and that could be prepared fairly quickly. While there is no guarantee such an ordinance would not be challenged as a sales tax it seems much less likely either that such a challenge would be made or that it would be successful.