

**CITY OF UNALASKA
UNALASKA, ALASKA
REGULAR MEETING
THURSDAY, NOVEMBER 8, 2012, 7:00 P.M.
UNALASKA CITY HALL COUNCIL CHAMBERS
AGENDA**

CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE:

RECOGNITION OF VISITORS

ADDITIONS TO AGENDA

MINUTES: OCTOBER 23, 2012

FINANCIAL REPORT

BOARD/COMMISSION REPORTS: LIBRARY COMMITTEE MINUTES – SEPTEMBER & OCTOBER

AWARDS/PRESENTATIONS: JOHN DAYS – 20 YEARS WITH CITY OF UNALASKA

MANAGER'S REPORT

COMMUNITY INPUT/ANNOUNCEMENTS

PUBLIC INPUT ON AGENDA ITEMS

PUBLIC HEARING

1. **ORDINANCE 2012-12 – PUBLIC HEARING:** AN ORDINANCE CREATING BUDGET AMENDMENT NO. 2 TO THE FY13 BUDGET TO INCREASE APPROPRIATED FUND BALANCE, GRANT REVENUES, FUNDING FOR GRANTS TO NON-PROFITS AND GRANT SUPPLIES IN THE GENERAL FUND AND TO INCREASE PROJECT EXPENSES IN THE LANDFILL 150 KVA TRANSFORMER, BIORKA DRIVE 500 KVA TRANSFORMER, AND BALER PLATEN RAM PROJECTS

WORK SESSION

1. **UPDATE:** FISHERIES – FRANK KELTY, NATURAL RESOURCES ANALYST
2. **DISCUSSION:** TITLE 6.40 REVISION

RECONVENE TO REGULAR SESSION

CONSENT AGENDA

UNFINISHED BUSINESS

1. **ORDINANCE 2012-12 – SECOND READING:** AN ORDINANCE CREATING BUDGET AMENDMENT NO. 2 TO THE FY13 BUDGET TO INCREASE APPROPRIATED FUND BALANCE, GRANT REVENUES, FUNDING FOR GRANTS TO NON-PROFITS AND GRANT SUPPLIES IN THE GENERAL FUND AND TO INCREASE PROJECT EXPENSES IN THE LANDFILL 150 KVA TRANSFORMER, BIORKA DRIVE 500 KVA TRANSFORMER, AND BALER PLATEN RAM PROJECTS

NEW BUSINESS

COUNCIL DIRECTIVES TO MANAGER

COMMUNITY INPUT

ANNOUNCEMENTS

ADJOURNMENT

CITY OF UNALASKA
UNALASKA, ALASKA
REGULAR MEETING
October 23, 2012

The regular meeting of the Unalaska City Council was called to order by Mayor Shirley Marquardt at 7:00 p.m., October 23, 2012, in the Unalaska City Hall Council Chambers. Roll was taken:

PRESENT

Mayor

Shirley Marquardt
Zoya Johnson
Zac Schasteen
Tom Enlow
Roger Rowland
David Gregory

ABSENT

Dennis Robinson (Excused)

PLEDGE OF ALLEGIANCE: Mayor Marquardt led the Pledge of Allegiance.

RECOGNITION OF VISITORS: No visitors were introduced

APPROVAL OF AGENDA: The agenda was adopted as presented.

MINUTES: The minutes of October 9, 2012 were approved as submitted.

FINANCIAL REPORT

BOARD/COMMISSION REPORTS

AWARDS/PRESENTATIONS:

MANAGER'S REPORT:

1. City Manager Chris Hladick and Director of Public Works Nancy Peterson will fly to Anchorage this week to meet with Granite Construction to discuss paving issues.
2. The Mooring Buoy permit has been signed by the Department of Natural Resources. The buoy will be set by Shell in early November.
3. An excise tax is being reviewed in house and is planned to come before Council in November.
4. Wastewater permitting is moving forward. Blasting behind the current treatment plant should start on Thursday.
5. We are currently going through the punch list for the Carl E. Moses Boat Harbor, and the contractor is working through the punch list for the breakwaters with the US Army Corps of Engineers.
6. The realignment of Summer Bay Road is nearly complete. It should be open next week.
7. Ron Moore has removed over 6 million pounds of scrap metal from the islands and has found a market for old fish nets.
8. Alaska Airlines has promised to talk with the City Manager about seats for local residents during the holiday season.

COMMUNITY INPUT/ANNOUNCEMENTS:

1. Dennis Robinson's mother passed away on Sunday. Services for Maria Turnpaugh will be held on Thursday at the Russian Orthodox Church.
2. The Pumpkin Plunge and Glow Light Swim will be held on October 27th from 6:30 to 9:30 p.m. at the pool.
3. The PCR Halloween Party will be held October 31st from 5:30 to 7:30 p.m.
4. D. McGirt was given an outstanding service award by the recreation association.
5. The Lions Club will hold an October Fest from 6:00 pm. to 9:00 p.m. on October 27th at Margaret's Bay Café.

6. Frank Kelty, Natural Resources Analyst, gave a brief update on the fisheries.

LEGISLATIVE

1. OATHS:

The City Clerk administered the oath of office to newly elected Council member Tom Enlow and re-elected Council member Zac Schasteen.

PUBLIC HEARING

WORK SESSION Gregory made a motion to move into a Work Session; Johnson seconded. VOTE: Motion Passed Unanimously

1. DISCUSSION: UTILITY RATE FOLLOW-UP – MIKE HUBBARD REPORT

Mike Hubbard of the Financial Engineering Company provided a utility rate follow-up report via teleconference. Following questions by Council, Mayor Marquardt opened the discussion to questions from the public.

2. PRESENTATION: TITLE 6.40 SALES TAX REVISION

Elizabeth Masoni, City Clerk, presented proposed changes to Title 6.40.

RECONVENE TO REGULAR SESSION

CONSENT AGENDA

UNFINISHED BUSINESS

NEW BUSINESS

1. RESOLUTION 2012-71: ACCEPTING A \$3,970,874 GRANT FROM THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION FOR THE CONSTRUCTION OF THE WASTEWATER TREATMENT PLANT UPGRADES PROJECT

Rowland made a motion to amend Resolution 2012-71 adopted at the October 9, 2012 meeting by inserting, "Whereas, the City of Unalaska accepts responsibility for operating and maintaining the proposed wastewater utility improvements; and whereas, the City of Unalaska agrees to the terms and conditions of the grant offer"; Johnson seconded.

VOTE: Motion Passed Unanimously

2. ORDINANCE 2012-12 - FIRST READING: AN ORDINANCE CREATING BUDGET AMENDMENT NO. 2 TO THE FY13 BUDGET TO INCREASE APPROPRIATED FUND BALANCE, GRANT REVENUES, FUNDING FOR GRANTS TO NON-PROFITS AND GRANT SUPPLIES IN THE GENERAL FUND AND TO INCREASE PROJECT EXPENSES IN THE LANDFILL 150 KVA TRANSFORMER, BIORKA DRIVE 500 KVA TRANSFORMER, AND BALER PLATEN RAM PROJECTS

Rowland made a motion to move Ordinance 2012-12 to Public Hearing and Second Reading at the November 8, 2012 meeting; Johnson seconded.

Enlow made a motion to remove the \$75,000 in funding for the Museum of the Aleutians and have it brought back in a separate ordinance devoted solely to Museum of the Aleutians funding; Gregory seconded.

Enlow spoke in favor of separating the Museum of the Aleutians funding from the other items in the budget amendment ordinance.

Following discussion by Council, Mayor Marquardt invited Public Input.

Michelle Cochran spoke in favor of supporting the request by the Museum of the Aleutians and of the value the museum brings to the community.

Sharon Svarny-Livingston, Chair of the Board of Directors of the Museum of the Aleutians, spoke in favor of funding the request and spoke to the importance of the museum in preserving the heritage of the community.

Council Member Johnson asked to be excused from voting due to conflict of interest because she is the Executive Director of the Museum of the Aleutians. Mayor Marquardt referred to the legal opinion by Brooks Chandler, City Attorney, that, based on Unalaska Code of Ordinance 2.88.020, 2.88.030, and 2.88.040, as well as Alaska Statute 29.20.010, Council Member Johnson is not allowed to excuse herself from voting because there is no conflict of interest.

VOTE on Amendment: No – 2; Yes – 3. Motion failed.

Rowland made a motion to amend Ordinance 2012-12 to indicate that the \$75,000 in funding is to be used solely for the Museum of the Aleutians redesign project and not for salaries and that the award of the \$75,000 is contingent upon other funds for completion of the museum redesign project being received; Johnson seconded the motion.

VOTE on Amendment: Motion Passed Unanimously by Roll Call.

VOTE on Main Motion as Amended: Rowland – Yes; Gregory – Yes; Enlow – Yes; Johnson – Yes; Schasteen – No. Motion passed.

3. **RESOLUTION 2012-72:** AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH ALASKA MECHANICAL, INC. FOR THE CONSTRUCTION OF THE POOL FAN ROOM UPGRADES PROJECT IN AN AMOUNT NOT TO EXCEED \$376,998

Rowland made a motion to adopt Resolution 2012-72; Johnson seconded.

VOTE: Motion passed unanimously.

4. **RESOLUTION NO. 2012-73:** AUTHORIZING FORECLOSURE PROCEEDINGS ON DELINQUENT PROPERTY TAXES FOR TAX YEARS 2009 – 2011

Rowland made a motion to adopt Resolution 2012-73; Schasteen seconded.

VOTE: Motion passed unanimously.

5. **RESOLUTION 2012-74:** AUTHORIZING THE MAYOR TO AMEND THE EXISTING EMPLOYMENT AGREEMENT WITH CHRIS HLADICK TO REFLECT A COST OF LIVING ADJUSTMENT

Rowland made a motion to adopt Resolution 2012-74; Enlow seconded.

VOTE: Motion Passed Unanimously.

6. **TRAVEL:** MAYOR AND COUNCIL TRAVEL TO ANCHORAGE FOR NORTH PACIFIC FISHERIES MANAGEMENT COUNCIL MEETINGS – DECEMBER 3 – 7, 2012

Rowland made a motion to send Mayor and Council Members who are interested and available to the North Pacific Fisheries Management Council meetings in Anchorage, December 3rd through 7th; Enlow seconded.

Enlow made a motion to amend the main motion to indicate that Mayor Marquardt will be sent to the meetings; Johnson seconded.

VOTE on Amendment: Motion passed unanimously.

Schasteen made a motion to further amend the main motion to indicate that Rowland will be sent to the meetings if, after consulting his calendar, he determines that he is available to attend; Enlow seconded.

VOTE on Amendment: Motion passed unanimously.

VOTE on Main Motion as Amended: Motion passed unanimously.

COUNCIL DIRECTIVES

COMMUNITY INPUT/ANNOUNCEMENTS

Johnson read the City Attorney's opinion regarding conflict of interest in requiring the Executive Director of the Museum of the Aleutians to vote on the Budget Amendment that includes funding for the redesign project.

ADJOURNMENT The meeting adjourned at 9:14 p.m.

Elizabeth Masoni
City Clerk

**UNALASKA PUBLIC LIBRARY
ADVISORY COMMITTEE**

Monday, September 10, 2012
7:00 PM

Public Library,
Library Main Conference Room

Mission:

The Unalaska Public Library will improve the quality of life in the community it serves by providing access to popular reading materials, and by acting as a gateway to learning and knowledge for children and adults.

- I. Call To Order and Roll Call. **Meeting called to order 7:05.**
Present: Glorso; Conwell; Dickson; Andersen; Masoni
Absent: Crane; Adams; Hawley
- Ia. Legislative: One Committee Seat is Vacant- **no applicants**
- II. Introduction of Visitors - **None**
- III. Additions or Changes to the Agenda - **None**
- IV. Public Comment on Agenda Items - **None**
- V. Minutes of the June meeting - **Adopted as presented- Glorso**
- VI. Librarian's Reports for June, July, and August -**in addition to Librarian's Report: part-time evening staff position unfilled- 1 application in hand, 2 potential pending; retired Gates computer; Russian, Japanese, and Spanish keyboards all working; Deep Freeze security working**
- VII. Old or Unfinished Business
 - A. Alaska State Library/UAF Broadband Grant – Discussion
 - B. Summer Reading and Fall Children's Reading Party - **Sept 15th 2-4**
 - C. OWL Launch Open House - **video presentation and demonstration tentatively scheduled for early October**
- VIII. New Business
 - A. OWL Sustainability Conference September 20-21 in Anchorage - **conference goal to help libraries find funding for broadband; hopefully get state funding as broadband delivery speeds are drastically cut due to videoconferencing option**
- IX. Announcements: Masoni out on personal leave and OWL Sustainability Conference September 12 – 23.
- X. Adjournment - **Meeting adjourned 7:35**

Committee Members and Terms:

M. Lynn Crane - 02/2015	Mandy Andersen, Secretary - 02/2015	Rosie Glorso, Chair - 02/2013
Mayumi Conwell, Vice Chair - 02/2014	- 02/2013	Jim Dickson - 02/2014
		Irena Adams - 02/2015

**UNALASKA PUBLIC LIBRARY
ADVISORY COMMITTEE**

Monday, October 1, 2012
7:00 PM

Public Library,
Ray Hudson Room

Mission:

The Unalaska Public Library will improve the quality of life in the community it serves by providing access to popular reading materials, and by acting as a gateway to learning and knowledge for children and adults.

- I. Call To Order and Roll Call. **Meeting called to order 7:06**
 - Present: Glorso; Conwell; Dickson; Adams; Hawley; Andersen; Masoni**
 - Excused: Crane**
- Ia. Legislative: One Committee Seat is Vacant
- II. Introduction of Visitors. **None**
- III. Additions or Changes to the Agenda - **add Old/Unfinished VII.D. Follett Destiny**
- IV. Public Comment on Agenda Items - **None**
- V. Minutes of the September meeting - **motion to adopt by Andersen, Conwell 2nd; adopted by consensus**
- VI. Librarian's Report for September - **see attached**
- VII. Old or Unfinished Business
 - A. Alaska State Library/UAF Broadband Grant – Discussion of Sustainability – **Masoni pointed out that libraries can't charge State Departments for Broadband Access because of present FCC rules, eliminating a possible funding source; AK Department of Ed will try to keep it in-house by putting funding in state library budget to keep at approx. 50% level of broadband and UAF staffing. May need additional \$30,000 for internet in FY14 budget**
 - B. Summer Reading and Fall Children's Reading Party – Follow-up – **attended by over 50 families**
 - C. OWL Launch Open House – **staff will start planning; potential department-wide Open House**
- VIII. New Business
 - A. Alaska State Statutes 14.56.360-375 -- Discussion – **see attached**
- IX. Announcements: Masoni out on personal leave and Alaska Library Directors Leadership Group -- October 16 – 21, 2012; Alaska Association of School Boards Conference October 31 – November 5.

X. Adjournment – **7:51** Next meeting Nov 5th

Committee Members and Terms:

M. Lynn Crane - 02/2015	Mandy Andersen, Secretary - 02/2015	Rosie Glorso, Chair - 02/2013
Mayumi Conwell, Vice Chair - 02/2014	- 02/2013	Jim Dickson - 02/2014
		Irena Adams - 02/2015

CITY OF UNALASKA
UNALASKA, ALASKA

ORDINANCE NO. 2012-12

AN ORDINANCE CREATING BUDGET AMENDMENT NO. 2 TO THE FY13 BUDGET TO INCREASE APPROPRIATED FUND BALANCE, GRANT REVENUES, FUNDING FOR GRANTS TO NON-PROFITS AND GRANT SUPPLIES IN THE GENERAL FUND AND TO INCREASE PROJECT EXPENSES IN THE LANDFILL 150 KVA TRANSFORMER, BIORKA DRIVE 500 KVA TRANSFORMER, AND BALER PLATEN RAM PROJECTS.

BE IT ENACTED BY THE UNALASKA CITY COUNCIL:

Section 1. Classification: This is a non-code ordinance.
 Section 2. Effective Date: This ordinance becomes effective upon adoption.
 Section 3. Content: The City of Unalaska FY13 Budget is amended as follows:

- A. That the following sums of money are hereby accepted and the following sums of money are hereby authorized for expenditure.
 B. The Museum of the Aleutians funding is restricted to use on the redesign project, not for salaries and wages, and funding is contingent upon other funds for the completion of the redesign project being received.
 C. The following are the changes by account line item:

Amendment No. 2 to Ordinance # 2012-04				<u>Current</u>	<u>Requested</u>	<u>Revised</u>
<u>General Fund</u>						
Sources:						
Local Emergency Planning Grant	01011041	42157		-	14,343	14,343
Appropriated Fund Balance	01010049	49900		1,473,780	75,000	1,548,780
Subtotal of Sources					89,343	
Uses:						
<i>Dispatch, Police & DMV</i>						
Grants (Supplies)	01021152	56450		-	14,343	14,343
<i>Grants to Non-Profits</i>						
Museum of the Aleutians	01029154	58460		271,960	75,000	346,960
Subtotal of Uses					89,343	
<u>Electric Fund</u>						
Sources:						
* No sources are listed as there are adequate revenues over expenses in FY13 for this expense.						
Uses:						
Transfers Out to Capital	50029854	59940		-	32,279	32,279
<i>Electric Fund Capital Projects</i>						
Sources						
Transfers in From Electric Operating	50109848	49130	EL303	-	12,329	12,329
Transfers in From Electric Operating	50109848	49130	EL304	-	19,950	19,950
Subtotal Sources					32,279	
Uses:						
Machinery & Equipment	50125053	57400	EL303	-	12,329	12,329
Machinery & Equipment	50125053	57400	EL304	-	19,950	19,950
Subtotal Uses					32,279	

				<u>Current</u>	<u>Requested</u>	<u>Revised</u>
<u>Solid Waste Fund</u>						
<i>Solid Waste Capital Projects</i>						
Uses:						
Machinery & Equipment	53126553	57400	SW102	25,000	1,500	26,500

PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE UNALASKA CITY COUNCIL
THIS _____ DAY OF _____ 2012.

MAYOR

ATTEST:

CITY CLERK

1. *Public Safety.* This request is to add revenues and expenditures for the LEPC grant.
2. *Grants to Non-Profits.* This request is to add funding to the Museum of the Aleutians for the \$75,000 that was spoken of at the October 12, 2010 meeting.
3. *Electric Fund Capital Projects.* This request is to add funding for two transformers.
4. *Solid Waste Fund Capital Projects.* This request is to add funding for the Baler Platen Ram project for unanticipated freight charges.

MEMORANDUM TO COUNCIL

TO: MAYOR AND CITY COUNCIL MEMBERS
FROM: JAMIE SUNDERLAND, PUBLIC SAFETY DIRECTOR
THRU: CHRIS HLADICK, CITY MANAGER
FROM: DEPARTMENT OF PUBLIC SAFETY
DATE: 10/16/12
RE: BUDGET AMENDMENT ORDINANCE 2012-12

SUMMARY: During the October 23, 2012 meeting, we will be discussing the budget amendment request that is necessary to record grant revenues received from the Department of Military and Veteran Affairs Local Emergency Planning Committee Program, and to reallocate funds to the FY13 Police Operating Budget.

The total amount is: \$14,343.00.

PREVIOUS COUNCIL ACTION: There has been no previous council action on these items

BACKGROUND:

- 1) \$14,343.00 is a grant received from State of Alaska, Dept. of Military and Veteran Affairs for a Local Emergency Planning Committee (LEPC). This grant is 100% funded, and intended for supplies and support services for FY2013. LEPC funds are used for all-hazards emergency planning activities.

DISCUSSION:

- 1) The \$14,343.00 being requested is to purchase supplies and services pursuant to the guidelines set forth in the LEPC grant scope. The LEPC grant program reimburses all expenses to the City of Unalaska upon purchase and submission of receipts. All funds are expected to be fully expended within the grant timelines. 100% of the funds have been expended for the past several years in this grant.

ALTERNATIVES:

- 1) Decline participation in the LEPC grant program.

FINANCIAL IMPLICATIONS: In some cases, depending on the grant requirements, either the remaining balances must be returned at the close of the granting period, or if the allocated funds are not expended by the grant period, expenses beyond that date will be bore entirely by the City.

LEGAL: The legal obligation is to expend the funds in accordance with the scope of the grant. Remaining balances must be refunded unless the grant specifications are categorized as reimbursable. In that case, if the funds are not expended by the expiration of the grant period, the granting agency will not fund or reimburse the City.

STAFF RECOMMENDATION: Staff recommends the Council approve the budget amendment request in order for the department to remain in compliance with the scope and intent of the grant guidelines.

PROPOSED MOTION: Request a motion to approve Ordinance 2012-12, which includes a budget amendment to the Department of Public Safety's budget in the amount of \$14,343.00.

CITY MANAGER'S COMMENTS: I recommend approval of these changes to the FY13 Police budget.

Department of Public Safety Attachment

ISSUING AGENCY	Description	Amount	ALLOCATE TO BUDGET ACCOUNT
State of Alaska Department of Military and Veterans Affairs Division of Homeland Security and Emergency Management (LEPC)	Misc. State Operating Grants PS	\$14,343.00	01011041-42199
State of Alaska Department of Military and Veterans Affairs Division of Homeland Security and Emergency Management (LEPC)	Grants (supplies)	\$14,343.00	01021152-56450

MEMORANDUM TO COUNCIL

TO: MAYOR AND CITY COUNCIL MEMBERS
THROUGH: CHRIS HLADICK, CITY MANAGER
FROM: ELIZABETH MASONI, CITY CLERK
DATE: OCTOBER 19, 2012
RE: MUSEUM REQUEST

SUMMARY: Zoya Johnson, Executive Director of the Museum of the Aleutians, gave a presentation before Council at the October 12, 2010 meeting during which she asked that the Council provide \$75,000 as a show of its support for the museum renovation project.

PREVIOUS COUNCIL ACTION: Prior to the October 12, 2010 Council meeting, there was no action on this particular request.

DISCUSSION: At the October 12, 2010 Council meeting, Executive Director Zoya Johnson gave a presentation on the proposed redesign of the permanent gallery and renovation of other areas of the museum. Because the presentation occurred during a Work Session, minutes were not taken. However, we do have the audio recording of the meeting.

At that meeting, as part of her presentation, the Executive Director explained the financial history of the project and the anticipated financial needs. Her presentation emphasized the grant funds the museum has been awarded and those being pursued. The Rasmuson Foundation invited the museum to apply for grant funds, but the award of funding would rely on an indication that the community supports the project. That support would have to come in the form of a \$75,000 financial commitment. Following the presentation, Council members asked questions of the Executive Director and the City Manager and expressed their opinions about the project. Three members of the public spoke about the project.

The Mayor Pro Tem thanked the Executive Director for all of her effort in pursuing funding. He called on the City Manager who said the \$75,000 would be included in a budget amendment and brought back to Council for their approval.

MEMORANDUM TO COUNCIL

TO: MAYOR AND CITY COUNCIL MEMBERS
FROM: DAN WINTERS, DIRECTOR OF PUBLIC UTILITIES
THRU: CHRIS HLADICK, CITY MANAGER
DATE: OCTOBER 12, 2012
RE: BUDGET AMENDMENT REQUEST – SW102 – BALER PLATEN RAM REPLACEMENT PROJECT

SUMMARY: This budget amendment request in the amount of \$1,500.00 to be transferred from the Solid Waste Enterprise Fund retained earnings to the Baler Platen Ram Project (SW102) is made in order to fund freight overages related to shipping in the parts for the repair.

PREVIOUS COUNCIL ACTION: This project was funded via an amendment to the FY2011 Capital Budget in the amount of \$25,000 via Ordinance 2010-13 on September 28, 2010.

BACKGROUND: The cost for the parts for this Baler repair did not exceed the project budget, however, the freight costs were higher than anticipated and the budget for this project was over run.

DISCUSSION: This budget amendment request is made to fund the freight costs associated with the parts required to repair the Baler Platen Ram. Freight costs were underestimated by \$1,521.83, leaving a shortage of \$1,459.82 in the project's budget. This request will balance that project's budget.

ALTERNATIVES: Council could elect not to fund the budget overage and have these costs paid from the Operating Budget of the Solid Waste Division. Doing so would not entirely capture the cost of repairs in MUNIS and the true cost of the asset would not be recognized.

FINANCIAL IMPLICATIONS: The proposed new budget for the Project is set forth below:

5312-6553-57400 SW102	Original Budget	YTD Expended	Available Budget	This Request	Revised Budget
Baler Platen Ram					
Machinery & Equipment	\$25,000.00	\$26,461.23	(\$1,461.23)	\$1,500.00	\$38.77

LEGAL: N/A.

STAFF RECOMMENDATION: Staff recommends fully funding this budget amendment request.

PROPOSED MOTION: I move to approve Ordinance 2012-12.

CITY MANAGER'S COMMENTS: I recommend approval.

MEMORANDUM TO COUNCIL

TO: MAYOR AND CITY COUNCIL MEMBERS
FROM: DAN WINTERS, DIRECTOR OF PUBLIC UTILITIES
THRU: CHRIS HLADICK, CITY MANAGER
DATE: OCTOBER 12, 2012
RE: BUDGET AMENDMENT REQUEST – ELECTRICAL TRANSFORMER REPLACEMENTS

SUMMARY: This budget amendment request in the amount of \$ 32,279 to be transferred from the Electric Enterprise Fund retained earnings, to the Electric Lineman Budget, General Supplies. These monies will be used to fund the emergency purchase of two electrical transformers.

PREVIOUS COUNCIL ACTION: Council approved the FY2013 Capital and Operating Budgets via Ordinance 2012-04. In prior years, Council has funded maintenance and replacement of electrical distribution equipment annually through the CMMP process.

BACKGROUND: Typically equipment that is replaced that has a cost that exceeds \$10,000 is replaced through the CMMP process. However, during this year's equipment inspection process, two electrical transformers, one at the Landfill and one on Biorka Drive, were found to be close to failure.

The Landfill 150 KVA transformer was installed in 1998 and maintenance records show this transformer was repainted in FY2000. During our yearly inspection, it was found to have a bad oil leak on the casing. Further inspection found that the metal in the area of the leak is very thin. The leak was sealed with Splash Zone Putty for a temporary repair.

The Biorka Drive 500 KVA transformer was also installed in 1998. Maintenance records show that this transformer was repainted in FY2006. During our yearly inspection an oil leak was found on the cooling fins. The metal in the leaking area is very thin and cannot be repaired. Splash Zone Putty has been applied to the leak for a temporary repair.

DISCUSSION: This budget amendment request is made in order to fund the emergency purchase of transformers totaling \$32,279. The transformers will be installed at the Landfill, and on Biorka Drive. These transformers were bought on an emergency basis and paid for by the Electrical Distribution Division's budget through the general supplies line item.

Both transformers are constructed of carbon steel and found to have non-repairable leaks. The life expectancy of a carbon steel constructed transformer in our environment is approximately 15 years. The Landfill transformer has been in service for 14 years and the

Biorka Drive transformer for 12 years. The new transformers, which have been ordered, are of stainless steel construction and expected to be in service for 30 years

ALTERNATIVES: Council could elect not to fund this purchase.

FINANCIAL IMPLICATIONS: The proposed new budget for the equipment line item in the Electric Distribution Division is set forth below:

5002-4252-56100	Original Budget	YTD Expended	Encumbered	Available Budget	This Request	Revised Budget
Electric Line Repair & Maintenance						
General Supplies	\$180,000.00	\$35,711.33	\$41,131.70	\$103,156.97	\$32,279.00	\$135,435.97

LEGAL: N/A.

STAFF RECOMMENDATION: Staff recommends fully funding this budget amendment request.

PROPOSED MOTION: I move to approve Ordinance 2012-12.

CITY MANAGER'S COMMENTS: I recommend approval.

BOYD, CHANDLER & FALCONER, LLP
ATTORNEYS AT LAW
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911 WEST EIGHTH AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE: (907) 272-8401
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bcf@bcf.us.com

MEMORANDUM

TO: Unalaska City Council

FROM: Brooks W. Chandler
City Attorney

RE: Voting on Motion/Resolution to Fund Museum Renovation Project

DATE: October 22, 2012

This is written in response to a request for a legal opinion regarding whether a city council member who is employed as the executive director of the Museum of the Aleutians is prohibited by law from voting on a proposal to authorize the expenditure of approximately \$200,000 in city funds for a \$600,000 renovation project at the museum¹. Based on our review of the city code we believe the answer is NO unless the executive director's salary will be paid from either the city funds or other grant funds associated with the project. The reasons for this conclusion are set forth in greater detail below.

FACTS

A member of the Unalaska city council is also employed as the executive director of the Museum of the Aleutians Association ("Museum"). The Museum was established and continues to exist as a non-profit corporation. Funding is provided from a variety of sources including significant funding of operational costs from the City of Unalaska. We have not reviewed the job description of the executive director. But we have some familiarity with the Museum and believe the executive director has significant responsibility for all aspects of the Museum operation including fund raising and execution of capital projects. The governing body of the museum is a

¹The remaining money needed for the project will come from a variety of grant funds all of which are contingent on a fully funded project.

board of directors ("the Board") some of which are appointed by the Ounalashka Corporation and some of which are appointed by the City of Unalaska.

The Board previously authorized an effort to obtain funding for a significant renovation of the Museum. The executive director was tasked with the responsibility to pursue grant funding for the project. At the outset of funding efforts the City pledged approximately \$75,000 in city funds contingent on raising the balance from other funding sources. Currently, about \$400,000 has been committed to the Project leaving a "gap" in funding. The City Council intends to consider a proposal made by the Museum to make up the "gap" by increasing the City's funding for the project to approximately \$200,000.

LAW

Unalaska City Code.

Section 2.88.030(A) of the Unalaska code of ordinances (UCO) prohibits a member of the city council from voting "on any question on which the member or a member of their immediate family has a substantial financial interest". "Substantial financial interest" is not specifically defined in this section of the ordinance.

UCO 2.88.020(A) states a city "officer" that has a "substantial financial interest" "direct or indirect" in any contract with the City may not "participate in the making or performance of such contract". "Officer" is not specifically defined, however the term "city official" is defined to include members of the city council.² "Substantial financial interest" is not specifically defined in this section of the ordinance either, however, several examples of situations that are not a substantial financial interest are set forth. These include "[a] contract with a . . . corporation . . . in which a City officer or employee has an interest solely by reason of employment as an officer or employee thereof where the remuneration of such employment will not be directly affected as a result of such contract, and the duties of such employment do not directly involve the procurement, preparation, or performance of any part thereof".³

The ordinance anticipates a two step process. The first step is for the council member to "make known" "any financial interest" the council member has in a contract or matter being voted on. UCO 2.88.040(A). The second step is a determination by the city attorney regarding whether the council member may vote or participate in the matter. UCO 2.88.040(C). Thus, the

²UCO 2.88.085(B); UCO 2.04.010(A)(2).

³UCO 2.88.020(B)(1).

ordinance anticipates the city attorney making the determination regarding whether a declared financial interest is a "substantial" financial interest. Although an official declaration has not yet been made, this memorandum should be considered the city attorney determination required by UCO 2.88.040(C).

Alaska Statutes

The requirement of a "declaration" of a "substantial" financial interest is required by state law. AS 29.20.010. State law does not mandate declarations of "any" financial interest but the City is free to have stricter conflict of interest requirements than the minimum requirements established by state law. Unalaska has chosen to do so. Any financial interest in a city council action must be declared.

ANALYSIS

"Officer" vs. "Official"

In our opinion, there is no legally significant difference between an "officer" or an "official" as those terms are used in Chapter 2.88 of the Unalaska City Code. Accordingly, we believe the contracting restrictions of UCO 2.88.020 apply to members of the city council.

"Substantial Financial Interest"

The only guidance to what is a substantial financial interest for purposes of Chapter 2.88 is provided by examples of what is not a substantial financial interest. With regard to voting these are fairly limited and are not helpful⁴. The contracting examples of what is not a substantial financial interest are not directly applicable. Appropriating money to partially fund a project is not a contract with the Museum. Rather, it is a vote amending a previous budget action either by amending the FY 2013 budget ordinance or by authorizing an "encumbrance" of funds to be appropriated at some point in the future by ordinance. Nevertheless, the reference in the contract section of Chapter 2.88, in my opinion, does shed light on the intent of the ethics code in situations in which an employee of a non-profit corporation is voting on an appropriation of public funds to the non-profit corporation. In those situations, the critical issue is whether the salary of the council member/employee is impacted by the council decision on whether to approve the funding request.

For example, appropriations of operating funds a portion of which would go to pay the salary of the executive director is a "substantial financial interest". But an appropriation which will go to pay a contractor to renovate the museum is not a substantial financial interest. The only possible financial interest the executive director could have in a vote on this matter is whether either the city appropriation or any of the grants in hand allow the Museum to spend a portion of


⁴UCO 2.88.030(B)(condemnation and zoning matters unless council member is the applicant for a permit or zoning change).

the funds on "administration". If this is the case, and if any of this "administration" money ultimately funds the executive director's salary, (such as when the director's time administering the project is "charged" to the grant) then the executive director does have a financial interest in the vote on increasing the city contribution to the project.

We recommend the details on whether the grants contingent on the council vote can or will partially fund the executive director's salary be examined. If they will not, there is not any financial interest in the vote and a declaration is not necessary. If the executive director's salary will or could be "charged" to the grant, then a declaration should be made and some attempt to determine the amount of the salary paid from grant funds should also be made.

I will be traveling during the time the council is meeting and not available but can be contacted up to 1 p.m. Alaska time Tuesday if there are any additional questions on this matter.

MEMORANDUM TO COUNCIL

TO: MAYOR AND CITY COUNCIL MEMBERS
THRU: CHRIS HLADICK, CITY MANAGER
FROM: FRANK KELTY, RESOURCE ANALYST 
DATE: NOVEMBER 5, 2012
RE: FISHERIES UPDATE FOR NOVEMEBR 8, 2012 UNALASKA CITY COUNCIL MEETING

I will discuss with the Council the Right of First Refusal (ROFR) community protection issue, that is pending and up for final action before the North pacific Council at its February meeting in Portland, Oregon

I will provide and update on the end of the 2012 Pollock B season and Bering Sea Aleutian Island Crab fisheries.

Attachments:

Item1. Right of First Refusal (ROFR) Purpose and need State and the Description of the Alternatives under consideration.

Item2. Council Motion on the ROFR issue and changes made to the Alternatives and Purpose and Need Statement at the October 2012 Council meeting in Anchorage.

Item3. National Marine Fisheries Service Groundfish and Crab catch reports.

In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nonetheless essential to consider. Further, in choosing among alternative regulatory approaches agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

E.O. 12866 further requires that the Office of Management and Budget review proposed regulatory programs that are considered to be “significant”. A “significant regulatory action” is one that is likely to:

- Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, local or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.

2.1 Purpose and Need Statement

The Council has adopted the following purpose and need statement for this action:

The Bering Sea/Aleutian Islands crab rationalization program recognizes the unique relationship between specific crab-dependent communities and their shore-based processors, and has addressed that codependence by establishing community “right of first refusal” agreements as a significant feature of the program. These right of first refusal agreements apply to the Processor Quota Shares initially issued within each community, and are entered into and held by Eligible Crab Community Organizations on behalf of each respective community.

*To date, there have been several significant Processor Quota Share transactions, resulting in Eligible Crab Community Organizations now owning **between 20 percent and 50 percent of the PQS⁹** in each rationalized fishery. However, the ability of the right of first refusal to lapse may diminish the intent to protect community interests. Also, limiting the time period to exercise the right may conflict with the ability to exercise and perform under the right of first refusal. In addition, some communities, when exercising the right of first refusal may have no interest in purchasing assets located in another community and feel the right of first refusal contract should exclude any such requirement.¹⁰*

⁹ The Council should consider revising this clause to state that community organizations “hold substantial portions of the PQS in each rationalized fishery.” Although it is possible that organization holdings reach these levels in some fisheries, in some cases holdings are indirect. In addition, some holdings of PQS on which a community entity has never held a right of first refusal. Given these circumstances, the statement as written may not be fully accurate or may be misconstrued by readers. A more general statement may address these concerns.

¹⁰ The Council should consider revision of the purpose and need statement to identify the need to improve notices of transfers and IPQ usage to community entities and NOAA Fisheries.

2.2 Description of Alternatives

The Council has identified five actions for this amendment package. Under Action 1, the time available for a community entity to exercise a right of first refusal would be extended from 60 days to 90 days, and the time for a community entity to perform under the contract would be extended from 120 days to 150 days.¹¹ Action 2 could be used to modify two provisions under which the right of first refusal expires. First, the action could be used to continue rights of first refusal regardless of whether IPQ are used outside of the community from which those shares originated. Under the current rule, the right expires, if IPQ are used outside that community for three consecutive years. The action could also be used to change the community that benefits from the right, in the event a community entity fails to exercise the right on a transfer to which the right applies. Under this alternative, the new PQS holder would be permitted to identify the community that would benefit from the right. Options would either allow or prohibit the entity holding the right at the time of the transfer from being identified as the future right holder. Action 3 could be used to apply a community entity's right to either the subject PQS only or to the subject PQS and assets located in the community intended to benefit from the right of first refusal. The current rule applies the right to any assets included in the transaction with the subject PQS, which may include any assets outside of the community. Under Action 4, a PQS holder could only use IPQ yielded by PQS in the community that benefits from the right of first refusal, unless the community benefiting from the right consents to the use of the IPQ outside that community. Currently, IPQ may be used by the PQS holder in any location (subject to any applicable regional landing requirement). Action 5 would create new notice requirements intended to ensure that the right holder and NOAA Fisheries have adequate information to track use of IPQ and transfers of IPQ and PQS as needed to protect their interests under the right.

The specific elements and options identified by the Council are:

Action 1: Increase a right holding entity's time to exercise the right and perform as required.

Alternative 1 – status quo

- 1) Maintain current period for exercising the right of first refusal at 60 days from receipt of the contract.
- 2) Maintain current period for performing under the right of first refusal contract at 120 days from receipt of the contract.

Alternative 2: Increase an entity's time to exercise the right and perform.

- 1) Require parties to rights of first refusal contracts to extend the period for exercising the right of first refusal from 60 days from receipt of the contract to 90 days from receipt of the contract.
- 2) Require parties to rights of first refusal contracts to extend the period for performing under the contract after exercising the right from 120 days from receipt of the contract to 150 days from receipt of the contract.

Action 2: Increase community protections by removing or modifying the (two) ROFR lapse provisions.

Provision 1

Alternative 1 – Status quo

Maintain current provision under which the right lapses, if IPQ are used outside the community of the entity holding the right for three consecutive years.

¹¹ Unless otherwise specified, all references to days in this document refer to **calendar** days.

Alternative 2 – Remove provision under which ROFR lapses if IPQ are used outside the community.

Require parties to rights of first refusal contracts to remove the provision that rights lapse, if the IPQ are used outside the community for a period of three consecutive years

Provision 2

Alternative 1 – Status quo

Maintain current provision, which allows rights to lapse, if the PQS is sold in a sale subject to the right (and the entity holding the right fails to exercise the right).

Alternative 2 – Continue right of first refusal, if a community entity fails to exercise the right on a transfer of PQS.

If the right is triggered by a sale subject to the right, and a community entity chooses not to exercise the right, the right is perpetuated in the community of origin.

Alternative 3 – Allow PQS holder to identify the right holder, if a community entity fails to exercise the right on a transfer of PQS

If the right is triggered by a sale subject to the right, a new ROFR contract would be signed at the time of transfer, in which the PQS buyer names the community that gets the ROFR:

Option 1: which may be the community that chose not to exercise the right.

Option 2: which may not be the community that chose not to exercise the right.

The right holder must be an existing entity that was eligible to hold a ROFR at the time of the implementation of the program in the region in which the IPQ must be landed.

Action 3: Apply the right to only PQS or PQS and assets in the subject community.

Alternative 1 – status quo

The right of first refusal applies to all assets included in a sale of PQS subject to the right, with the price determined by the sale contract.

Alternative 2: Apply the right to only PQS.

Require parties to rights of first refusal contracts to provide that the right shall apply only to the PQS subject to the right of first refusal. In the event other assets are included in the proposed sale, the price of the PQS to which the right applies shall be determined by a) agreement of the parties or b) if the parties are unable to agree, an appraiser jointly selected by the PQS holder and the entity holding the right of first refusal.

For any transaction that includes only PQS, the community entity may request that an appraiser value the PQS. If the appraiser's valuation differs from that of the contract, the right of first refusal shall be at the price determined by the appraiser.

The appraiser shall establish a price that represents the fair market value of the PQS, but may adjust the price to address any diminishment in value of other assets included in the PQS transaction subject to the right.

Timeline for appraisal and performance¹²

From the date of receipt of the sale contract by the community entity:

Within:

10 days: community may request an appraiser

20 days: jointly selected assessor chosen, or if the parties do not agree on a single assessor, then each party chooses an assessor

40 days: if no single assessor is chosen, the two assessors will choose a third assessor

From the date of selection of the assessor (or assessors) by either method:

Within:

60 days: the assessor(s) establish a price

120 days: notification of community entity of intent to exercise ROFR

180 days: community representative must perform under the contract

The cost of the assessor will be paid equally by the PQS holder and the community entity. If a third assessor is chosen, the PQS holder and community entity will pay their chosen assessor and divide equally the cost of the third assessor.

Alternative 3: Apply the right to only PQS and assets in the subject community.

Require parties to rights of first refusal contracts to provide that the right shall apply only to the PQS and other assets physically present in the community benefiting from the right of first refusal. In the event other assets are included in the proposed sale, the price of the PQS to which the price applies shall be determined by a) agreement of the parties or b) if the parties are unable to agree, an appraiser jointly selected by the PQS holder and the entity holding the right of first refusal, or c) if the parties are unable to agree, an arbitrator jointly selected by the PQS holder and the entity holding the right of first refusal.

The appraiser will be selected by:

- 1) mutual agreement of the parties or
- 2) the PQS holder and the community representative each selecting an appraiser and by those appraisers selecting a third appraiser. This panel of appraisers will then perform the duties of the appraiser.

The appraiser shall establish a price that represents the fair market value of the PQS and community based assets, but may adjust the price to address any diminishment in value of other assets included in the PQS transaction subject to the right.

Within 10 days of receipt of a contract that includes PQS subject to the right, the community entity may request that an appraiser identify community based assets in the transaction and establish a price for the PQS and community based assets. If the appraiser's valuation differs from that of the contract, the right of first refusal shall be at the price determined by the appraiser. If the community entity fails to request that an appraiser establish the price, the price in the contract will apply and the right will apply to all assets in the transaction.

For any transaction that includes assets in addition to PQS, the appraiser shall determine which assets are community based.

¹² Note that the timeline for the appraisal process is reformatted from the December 2010 motion for clarity. No substantive modifications were made.

If an appraiser is requested by the community entity, the parties shall select the appraiser (or each shall select an appraiser) within 20 days of the community entity receiving the contract to which the right applies.

In the event that a single appraiser is not selected by agreement of the parties, the two selected appraisers shall select a third appraiser within 30 days of the community representative receiving the contract.

The appraisers shall establish the price for the PQS and community based assets within 60 days of the community representative receiving the contract.

The community representative must notify the PQS holder of its intent to exercise the right within 90 days of receipt of the contract.

The community representative must perform, as required by the contract or the appraiser, within 120 days of receipt of the contract.

The cost of a mutually selected appraiser shall be paid equally by the PQS holder and the community representative. If the parties do not agree on a single appraiser, each party shall pay the costs of the appraiser it chooses, and the parties shall pay equally for the third appraiser.

Action 4: Require community approval for IPQ subject to the right to be processed outside the subject community.

Alternative 1 – Status quo

Intra-company transfers of PQS and IPQ outside the subject community are permitted without requiring the PQS holder to notify the community entity that holds the right.

Alternative 2 – Require community consent to move IPQ outside the community

Require the PQS holder to obtain written approval from the community entity prior to processing IPQ subject to the right (or formerly subject to the right), at a facility outside the subject community.

Action 5: Require additional notices to right holders and NMFS

Require the following notices from PQS holders:

- 1) To the right holder, a prior notice of all transfers of IPQ or PQS that are subject to the right (regardless of whether the PQS holder believes the right applies to the transfer) (*as a required contract provision*);
- 2) To NMFS as a part of any application to transfer PQS subject to the right to any party other than the right holder, either:
 - a. A certification of the transferor of the PQS that the right holder was provided with 90 days notice of the right and did not exercise the right during that period (in which case the PQS may transfer and the right will no longer apply); or
 - b. A certification of the new PQS holder and the right holder that a contract has been entered establishing the right with respect to the new PQS holder or that the right holder has elected to waive the right with respect to the new holder.
- 3) To NMFS, as a part of the annual application for IPQ (and copied to the right holder), a statement as to whether the right has lapsed as a result of use of the IPQ outside of the community for 3 consecutive years; and
- 4) To the right holder annually, the location of use of IPQ that are subject to a right and whether the IPQ were used by the PQS holder (*as a required contract provision*).

C-6(a) – Modification of community provisions

The Council amended its purpose and need statement replacing the phrase “owning between 20 percent and 50 percent of the PQS” with the phrase “holding substantial portions of the PQS” in each rationalized fishery.

The Council also directed staff to modify the purpose and need statement to identify the need to improve notices of transfers.

The Council removed Options 1 and 2 from Action 2, Alternative 2.

The Council modified Action 3 by including an option that would add 30 days to each of the time periods under Alternatives 2 and 3.

The Council modified Action 5, Alternative 2 by adding the following additional notice:

To NMFS, as part of the annual application for IPQ, certification of a current ROFR agreement in place with the community entity.

The Council also passed the following addition to the purpose and need statement and additional action:

Purpose and need statement

At least one PQS transfer is believed to have occurred without the right holder (Aleutia Corporation) being informed of the transaction, denying that right holder of the ability to exercise its right of first refusal to acquire PQS as intended by the program. This lack of notice allowed the transfer of PQS to a party other than the right holder and the movement of the processing to another community. Providing that right holder with a direct allocation of PQS could mitigate the negative impacts arising from that transaction. In addition, providing for notice of the location of use of IPQ and transfers of PQS to right holders could prevent similar circumstances from arising in the future and make the right more effective in protecting communities’ historical interests in processing and ensure that community entities are better able to assert their interests as provided for by the right.

Alternatives

The Council requests staff to analyze the following alternatives:

- 1) Status quo
- 2) Bristol Bay red king crab PQS shall be allocated to Aleutia Corporation in an amount that would result in that corporation receiving 0.55 percent of the PQS in that fishery. This allocation would be made exclusively from newly issued PQS.

C-6(b) – Active participation requirements

The Council did not take up this agenda item, but stated the intention to take it up at a future meeting.

Crab Individual Fishing Quota (IFQ) Allocations and Landings

For Crab Fishing Year: 2012/2013

----- TAC -----					
Fishery	Vessel Landings	Total Catch Pounds	Allocation Pounds	Remaining Pounds	Percent Landed
BBR	193	6,700,636	7,067,700	367,064	95
EAG	32	***	2,979,000	***	***
SMB	34	***	1,467,000	***	***
WAG	12	***	2,682,000	***	***

Notes:

1. Asterisks represent confidential data.
2. This report summarizes fixed gear IFQ landings reported by Registered Crab Receivers.
3. 'Vessel Landings' include the number of landings by participating vessels reported by crab fishery. Each such landing may include harvests from more than one IFQ Permit Holder.
4. 'Vessel Offload' is the removal of crab from a harvesting vessel to (or by) a specific Registered Crab Receiver on a particular date/time.
5. Due to over- or underharvest of TAC and/or rounding, percentages may not total to 100%.
6. Data are derived from initial data entry procedures and are preliminary. Future review and editing may result in minor changes.
7. BBR - Bristol Bay red king crab; BSS - Bering Sea snow crab; EBT - Eastern Bering Sea Bairdi Tanner crab;
WBT - Western Bering Sea Bairdi Tanner Crab; EAG - Eastern Aleutian Islands golden king crab;
PIK - Pribilof Islands red and blue king crab; SMB - St. Mathews blue king crab; WAG - Western Aleutian Islands golden king crab;
WAI - Western Aleutian Islands red king crab
8. Fishing Year begins on July 1st and ends on June 30th.

NOAA Fisheries Service
PO Box 21668
Juneau, Alaska 99802-1668

Prepared: NOV-05-12 06:45
Restricted Access Management
800-304-4846

Total IFQ Landings & Pounds By Port For Fishing Year 2012

Port	Halibut		Sablefish	
	Vessel Landings	Pounds Landed	Vessel Landings	Pounds Landed
WASHINGTON				
BELLINGHAM	26	558,103	9	146,183
SEATTLE	***	***	***	***
ALASKA				
ADAK	***	***	***	***
AKUTAN	***	***	***	***
ATKA	***	***	***	***
CORDOVA	103	549,685	34	657,220
CRAIG	71	58,248	***	***
DUTCH HBR/UNALASKA	169	2,024,355	154	2,030,917
FALSE PASS	***	***	***	***
HAINES	5	6,002	***	***
HOMER	448	4,415,214	106	582,417
HOONAH	***	***	***	***
HYDER	***	***	***	***
JUNEAU	204	926,692	***	***
KAKE	***	***	***	***
KENAI	14	50,033	***	***
KETCHIKAN	67	125,513	***	***
KING COVE	***	***	***	***
KODIAK	706	4,924,505	243	4,165,914
PETERSBURG	268	1,004,935	66	1,101,245
PORT ALEXANDER	***	***	***	***
PORT PROTECTION	***	***	***	***
SAND POINT	***	***	***	***
SEWARD	334	2,592,444	275	5,136,940
SITKA	504	1,197,261	***	***
ST PAUL	***	***	***	***
VALDEZ	***	***	***	***
WHITTIER	15	35,865	***	***
WRANGELL	***	***	***	***
YAKUTAT	***	***	***	***
ZA OTHER	3	5,638	27	1,467,364
Totals	3,906	23,155,726	1,826	26,302,617

Notes:

1. This report summarizes fixed gear IFQ landings reported by Registered Buyers. At sea discards are not included.
2. Halibut weights are reported in net (headed and gutted) pounds. Sablefish weights are reported in round pounds.
3. "Vessel Landings" include the number of landings by participating vessels ignoring IFQ harvestarea. Each such landing may include harvests from more than one IFQ Permit Holder.
4. Landings at different harbors in the same general location (e.g. "Juneau, Douglas, and Auke Bay") have been combined to report landings to the main port (e.g. "Juneau").
5. "Vessel Offload" is the removal of fish from a harvesting vessel to (or by) a Registered Buyer on a particular date/time.
6. Due to over- or underharvest of TAC and/or rounding, percentages may not total to 100%.
7. Data are derived from initial data entry procedures and are preliminary. Future review and editing may result in minor changes.
8. Asterisks denote confidential data.

Individual Fishing Quota (IFQ) Allocations and Landings

For Fishing Year 2012

Area	Species	TAC				
		Vessel Landings	Total Catch Pounds	Allocation Pounds	Remaining Pounds	Percent Landed
2C	halibut	1,205	2,513,777	2,624,000	110,223	96
3A	halibut	1,797	11,616,067	11,918,000	301,933	97
3B	halibut	610	4,927,228	5,070,000	142,772	97
4A	halibut	200	1,537,806	1,567,000	29,194	98
4B	halibut	126	1,361,148	1,495,200	134,052	91
4C/4D	halibut	91	1,199,700	1,328,827	129,127	90
	Total	4,029	23,155,726	24,003,027	847,301	96
AI	sablefish	108	1,710,265	2,710,776	1,000,511	63
BS	sablefish	152	1,006,326	1,966,503	960,177	51
CG	sablefish	647	9,700,888	10,158,797	457,909	95
SE	sablefish	607	6,872,073	6,995,196	123,123	98
WG	sablefish	198	2,779,258	3,139,350	360,092	89
WY	sablefish	235	4,233,807	4,356,290	122,483	97
	Total	1,947	26,302,617	29,326,912	3,024,295	90

Total number of vessel offloads containing only halibut IFQ:	3,909
Total number of vessel offloads containing only sablefish IFQ:	1,828
Total number of vessel offloads containing both IFQ species:	1,168

Notes:

1. This report summarizes fixed gear IFQ landings reported by Registered Buyers. At sea discards excluded, confiscations included.
2. Halibut weights are reported in net (headed and gutted) pounds. Sablefish weights are reported in round pounds.
3. 'Vessel Landings' include the number of landings by participating vessels reported by IFQ regulatory area. Each such landing may include harvests from more than one IFQ Permit Holder. Since there may be more than one area represented in any particular offload, the sum of vessel landings will necessarily be greater than the 'Total number of vessel offloads'.
4. 'Vessel Offload' is the removal of fish from a harvesting vessel to (or by) a specific Registered Buyer on a particular date/time.
5. Due to over- or underharvest of TAC and/or rounding, percentages may not total to 100%.
6. Data are derived from initial data entry procedures and are preliminary. Future review and editing may result in minor changes.
7. Asterisks denote confidential data.
8. Landings in areas 4C and 4D have been combined, since 4C allocation may be fished in 4C or 4D. Harvest is debited from the account for the reported harvest area, but the combination in this report is a better representation of activity in the 4C/4D areas.

Community Development Quota (CDQ) Halibut Allocations and Landings

For Fishing Year 2012

Area	Species	TAC				
		Vessel Landings	Total Catch Pounds	Allocation Pounds	Remaining Pounds	Percent Landed
4B	halibut	***	***	373,800	***	***
4C	halibut	***	***	553,678	***	***
4D	halibut	199	283,960	332,207	48,247	85
4E	halibut	910	315,247	250,290	-64,957	126
	Total	1,527	1,397,768	1,509,975	112,207	93

Notes:

1. This report summarizes fixed gear CDQ landings reported by Registered Buyers. At sea discards excluded, confiscations included
2. Halibut weights are reported in net (headed and gutted) pounds.
3. 'Vessel Landings' include the number of landings by participating vessels reported by IFQ regulatory area. Each such landing may include harvests from more than one CDQ Permit Holder.
4. **4D allocation may be fished in 4D or 4E. Harvest is debited from the account for the reported harvest area. This may cause 4E landings to appear overharvested and 4D underharvested.**
5. **4C allocation may be fished in 4C or 4D. Harvest is debited from the account for the reported harvest area. This may cause 4D landings to appear overharvested and 4C underharvested.**
6. Due to over- or underharvest of TAC and/or rounding, percentages may not total to 100%.
7. Data are derived from initial data entry procedures and are preliminary. Future review and editing may result in minor changes.
8. Asterisks denote confidential data.

Bering Sea Aleutian Islands Catch Report (includes CDQ)

Through: 27-OCT-2012

National Marine Fisheries Service
Alaska Region, Sustainable Fisheries
Catch Accounting



Bering Sea

Seasons	Account	Total Catch	Quota	Remaining Quota	% Taken	Last Week Catch
	Other Rockfish (includes CDQ)	178	500	322	36%	7
	Pacific Ocean Perch (includes CDQ)	1,783	4,854	3,071	37%	312
	Sablefish (Hook-and-Line and Pot)	462	892	430	52%	2
	Sablefish CDQ (Hook-and-Line and Pot)	160	223	63	72%	0
	Sablefish (Trawl)	83	948	865	9%	0
	Sablefish CDQ (Trawl)	6	84	78	7%	0
	Greenland Turbot	2,497	5,296	2,799	47%	28
	Greenland Turbot CDQ	128	667	539	19%	0
X	Pollock, AFA Inshore	522,847	529,050	6,203	99%	5,500
X	Pollock, AFA Catcher Processor	423,177	423,240	63	100%	0
X	Pollock, AFA Mothership	105,384	105,810	426	100%	0
X	Pollock CDQ	121,854	121,900	46	100%	0
	Pollock, Incidental Catch, non-Bogoslof (includes CDQ)	26,264	32,400	6,136	81%	720
	Pollock, Incidental Catch, Bogoslof (includes CDQ)	79	500	421	16%	0

Bering Sea Aleutian Islands Catch Report (includes CDQ)

Through: 27-OCT-2012

National Marine Fisheries Service
Alaska Region, Sustainable Fisheries
Catch Accounting



Aleutian Islands

Seasons	Account	Total Catch	Quota	Remaining Quota	% Taken	Last Week Catch
	Other Rockfish (includes CDQ)	665	485	-180	137%	17
	Pacific Ocean Perch, Eastern	5,117	5,019	-98	102%	309
	Pacific Ocean Perch, Eastern CDQ	533	601	68	89%	161
	Pacific Ocean Perch, Central	4,330	4,456	126	97%	0
	Pacific Ocean Perch, Central CDQ	469	534	65	88%	0
	Pacific Ocean Perch, Western	7,400	7,483	83	99%	0
	Pacific Ocean Perch, Western CDQ	838	897	59	93%	0
	Rougheye Rockfish (includes CDQ) - BS + Eastern	72	231	159	31%	3
	Rougheye Rockfish (includes CDQ) - Central + Western	128	244	116	52%	0
	Atka Mackerel, Eastern (Jig)	0	167	167	0%	0
	Atka Mackerel, Eastern ICA	404	430	26	94%	2
X	Atka Mackerel, Eastern (Trawl)	31,339	33,784	2,445	93%	2,732
X	Atka Mackerel, Eastern CDQ	4,002	4,120	118	97%	81
X	Atka Mackerel, Central (Trawl)	9,145	9,511	366	96%	0
	Atka Mackerel, Central ICA	75	100	25	75%	0
X	Atka Mackerel, Central CDQ	1,103	1,152	49	96%	0
X	Atka Mackerel, Western (Trawl)	190	1,300	1,110	15%	0
	Atka Mackerel, Western ICA	0	40	40	1%	0
X	Atka Mackerel, Western CDQ	5	161	156	3%	0
	Sablefish (Hook-and-Line and Pot)	819	1,230	411	67%	4
	Sablefish CDQ (Hook-and-Line and Pot)	190	307	117	62%	1
	Sablefish (Trawl)	145	436	291	33%	0
	Sablefish CDQ (Trawl)	4	38	34	11%	0
	Greenland Turbot (includes CDQ)	1,656	2,430	774	68%	1
X	Pollock	0	5,000	5,000	0%	0
X	Pollock CDQ	0	0	0	0%	0
X	Pollock, Incidental Catch (includes CDQ)	971	1,600	629	61%	1

Bering Sea Aleutian Islands Catch Report (includes CDQ)

Through: 27-OCT-2012

National Marine Fisheries Service
Alaska Region, Sustainable Fisheries
Catch Accounting



Bering Sea Aleutian Islands

Seasons	Account	Total Catch	Quota	Remaining Quota	% Taken	Last Week Catch
	Alaska Plaice (includes CDQ)	15,845	20,400	4,555	78%	418
	Arrowtooth Flounder	20,864	22,325	1,461	93%	164
	Arrowtooth Flounder CDQ	943	2,675	1,732	35%	3
	Flathead Sole	10,513	30,482	19,969	34%	100
	Flathead Sole CDQ	410	3,652	3,242	11%	4
	Kamchatka Flounder (includes CDQ)	9,481	15,045	5,564	63%	8
	Northern Rockfish (includes CDQ)	2,497	4,700	2,203	53%	52
	Other Flatfish (includes CDQ)	3,401	3,200	-201	106%	64
X	Pacific Cod, Catcher Processor (Amendment 80)	26,990	33,232	6,242	81%	615
X	Pacific Cod, Catcher Processor (AFA)	6,260	6,621	361	95%	51
X	Pacific Cod, Catcher Vessel (Trawl)	46,420	47,749	1,329	97%	20
X	Pacific Cod, Catcher Processor (Hook-and-Line)	94,688	113,106	18,418	84%	2,051
X	Pacific Cod, Catcher Vessel (Hook-and-Line >= 60 ft)	0	30	30	0%	0
X	Pacific Cod, Catcher Processor (Pot)	3,844	3,484	-360	110%	282
X	Pacific Cod, Catcher Vessel (Pot >= 60 ft)	12,501	19,509	7,008	64%	0
X	Pacific Cod (Jig)	85	463	378	18%	0
	Pacific Cod (Hook-and-Line and Pot < 60 ft)	8,493	8,380	-113	101%	168
	Pacific Cod, Incidental Catch (Hook-and-Line and Pot)	108	500	392	22%	2
X	Pacific Cod CDQ	22,030	27,927	5,897	79%	115
	Rock Sole	69,561	77,691	8,130	90%	150
	Rock Sole CDQ	6,149	9,309	3,160	66%	1
	Shortraker Rockfish (includes CDQ)	287	393	106	73%	4
	Yellowfin Sole	124,048	180,386	56,338	69%	2,213
	Yellowfin Sole CDQ	11,125	21,614	10,489	51%	61
	Octopus (includes CDQ)	131	900	769	15%	0
	Sculpin (includes CDQ)	5,391	5,200	-191	104%	85
	Shark (includes CDQ)	80	200	120	40%	2
	Skate (includes CDQ)	21,964	24,700	2,736	89%	418
	Squid (includes CDQ)	673	425	-248	158%	18
Total:		1,799,285	1,992,418	193,133	90%	16,951

Other flatfish: all flatfish except Pacific halibut, flathead sole, Greenland turbot, rock sole, yellowfin sole, Kamchatka flounder, arrowtooth flounder, and Alaska plaice.

Other rockfish: all Sebastes and Sebastolobus species except for Pacific ocean perch, northern, shortraker, and roughey rockfish.

For changes to the harvest specifications refer to <http://alaskafisheries.noaa.gov/2012/hschanges.htm>

**Bering Sea Aleutian Islands
Seasonal Catch Report
(includes CDQ)
Through: 27-OCT-2012 Account: ALL**

**National Marine Fisheries Service
Alaska Region, Sustainable Fisheries
Catch Accounting**



Bering Sea

Pollock, AFA Inshore

Season	Begin	End	Total Catch	Quota	Remaining Quota	% Taken
A	20-Jan-2012	10-Jun-2012	209,997	211,620	1,623	99%
B	10-Jun-2012	01-Nov-2012	312,850	317,430	4,580	99%
Total:			522,847	529,050	6,203	99%

Pollock, AFA Catcher Processor

Season	Begin	End	Total Catch	Quota	Remaining Quota	% Taken
A	20-Jan-2012	10-Jun-2012	169,284	169,296	12	100%
B	10-Jun-2012	01-Nov-2012	253,893	253,944	51	100%
Total:			423,177	423,240	63	100%

Pollock, AFA Mothership

Season	Begin	End	Total Catch	Quota	Remaining Quota	% Taken
A	20-Jan-2012	10-Jun-2012	41,959	42,324	365	99%
B	10-Jun-2012	01-Nov-2012	63,424	63,486	62	100%
Total:			105,384	105,810	426	100%

Pollock CDQ

Season	Begin	End	Total Catch	Quota	Remaining Quota	% Taken
A	20-Jan-2012	10-Jun-2012	48,727	48,760	33	100%
B	10-Jun-2012	01-Nov-2012	73,126	73,140	14	100%
Total:			121,854	121,900	46	100%

Aleutian Islands

Atka Mackerel, Eastern (Trawl)

Season	Begin	End	Total Catch	Quota	Remaining Quota	% Taken
Before A	01-Jan-2012	20-Jan-2012	0	0	0	0%
A	20-Jan-2012	10-Jun-2012	16,008	16,607	599	96%
B	10-Jun-2012	02-Nov-2012	15,331	16,607	1,276	92%
After B	02-Nov-2012	31-Dec-2013	0	0	0	0%
Total:			31,339	33,214	1,875	94%

MEMORANDUM TO COUNCIL

TO: MAYOR AND CITY COUNCIL MEMBERS
THROUGH: CHRIS HLADICK, CITY MANAGER
FROM: ELIZABETH MASONI, CITY CLERK
DATE: OCTOBER 31, 2012
RE: TITLE 6.40 SALES TAX REVISIONS

SUMMARY: UCO Title 6.40 governs the levy and collection of sales tax. For some time, staff has been working on revisions to Title 6.40, Sales Tax, and, at the October 23, 2012 Council meeting, staff presented the first draft of proposed Title 6.40 amendments for Council consideration. Through this memo, staff is presenting follow-up information on concerns expressed about revision of §6.40.090 Collector's Compensatory Collection Discount.

PREVIOUS COUNCIL ACTION: The City Council first implemented a 2% sales tax in the 1960s. The 2% sales tax was increased to 3% by voter approval on October 4, 1988. In August of 1996, through Ordinance 96-14, Council attempted to increase the sales tax from 3% to 4%.

In July of 1995, through Ordinance 95-24, Council amended Chapter 6.4.030(A)(2) to include provisions for sale for resale, requiring that the certificate number be indicated on the sales slip and requiring an accounting of such sales on the sales tax reporting form.

In 2003, through Ordinance 03-05, Title 6 was, once again, revised. Among other changes, the sale for resale section was altered to what it is currently.

BACKGROUND: Staff researched the history of the compensatory collection discount for sales tax and found only that it was in place prior to 1982. In the 1970s, following the crash of crab, the City struggled financially. The City was not sure it could make payroll each month and was in danger of defaulting on loans. Offering a discount to those businesses that would consider paying monthly rather than quarterly helped ensure that funds would be coming in every 30 days.

During that time period, prior to the existence of computers, records were kept by hand, and offering a reward or discount for preparing reports monthly rather than quarterly was a true incentive for businesses to do the extra work.

DISCUSSION: Following the October 23, 2012 meeting, staff surveyed seventeen communities in Alaska to determine how they handle sales tax collection, whether or not they provide a compensatory collection discount, and what limits are placed on such discounts if they are allowed. A spreadsheet reflecting the results of our research follows this memo. Below is a summary of our research:

- Kodiak, like Unalaska, allows a 2% discount with no limit on the amount of the discount.
- Haines allows a 1% discount with no limit on the amount of the discount.

- Palmer and Wrangell do not have a compensatory collection discount.
- The remaining communities have a discount that ranges from 0.5% to 5%. Those communities also have a cap on the discount that ranges from \$35.00 per month to \$1,000 per quarter.
- Seven of the communities require monthly reporting and remitting of sales tax.

In Unalaska, businesses that report their sales tax on a monthly basis are given a 2% discount each month. In FY12, the top five businesses that reported and remitted sales tax on a monthly basis were discounted a total of \$182,887.49. The average annual discount among these top five businesses is approximately \$37,000. This is the amount of discount on \$1.85 million in sales tax, or \$61.7 million in annual sales.

We propose limiting the compensatory collection discount to a maximum of \$100 as a maximum for each monthly payment; \$100 is the 2% discount awarded on a tax liability of \$5,000. Businesses that collect less than \$5,000 per month may choose to report monthly and receive a 2% discount, or they may report quarterly.

We are also proposing requiring that those businesses with a sales tax liability that exceeds \$5,000 per month report and remit sales tax on a monthly basis. Sales tax in the amount of \$5,000 represents approximately \$167,000 in sales.

Only about a dozen businesses report monthly and take advantage of the 2% discount. Smaller businesses do not tend to concern themselves with the discount. A business that makes \$10,000 in sales collects \$300 in sales tax. The 2% discount on \$300 is only \$6.00.

Staff surveyed the top businesses that take advantage of the compensatory collection discount to find out how long it takes them to complete the monthly sales tax report form. (A copy of the monthly prepayment sales tax form follows this memorandum.) Most businesses that responded to our calls indicated that it took them between 30 minutes and an hour to complete the form. One business told us that it takes between 1½ and 2 hours to complete processing the monthly sales tax report in its entirety. That includes downloading necessary internal reports, reviewing and coding internal reports, getting required signatures, and processing the electronic payment.

ALTERNATIVES: No action is planned for this meeting. Staff is interested in gathering input from Council in anticipation of bringing forward an ordinance for Council's consideration.

FINANCIAL IMPLICATIONS: Reducing the 2% compensatory collection discount will result in approximately \$200,000 in increased revenues.

LEGAL: City Staff has been working and will continue to work with the City Attorney on revisions to Title 6.

STAFF RECOMMENDATION: Staff anticipates bringing proposed Title 6.4 changes back to Council in the form of an ordinance for a first reading after soliciting input from businesses and following review of the most recent changes by the City Attorney.

PROPOSED MOTION: This is for information purposes.

CITY MANAGER'S COMMENTS: I approve of the suggested changes to Title 6.40.

Attachments:

- Comparison of Sales Tax Compensatory Collection Discounts Spreadsheet
- Monthly Prepayment Sales Tax Form
- Council Memo for October 23, 2012 Meeting
- Redlined Title 6,40

COMPARISON OF SALES TAX COMPENSATORY COLLECTION DISCOUNTS

Municipality	Annual Sales Tax Revenue	Filing and/or Payment Requirements		Discount Amount	Discount Limit
		Monthly	Quarterly		
Bethel	\$ 7,420,000	Sales > \$250K/yr	Sales < \$250K/yr	1%	\$100 per filing period
Cordova	\$ 3,003,000		Required	2%	\$200 per quarter
Dillingham	\$ 2,300,000	Tax > \$99/mo	Tax < \$100/mo	1%	\$100 per filing period
Haines	\$ 2,689,000	Sales > \$1K/mo	Sales < \$1K/mo	1% for monthly filers	no limit
Juneau	\$ 38,430,000	Tax > \$1K/mo	Tax < \$1K/mo	Greater of \$10 or 1%	\$50/mo or \$100/qtr
Kenai Peninsula	\$ 27,800,000	Required		5%	\$1K per quarter
Ketchikan	\$ 9,304,000	Required		none	n/a
King Cove	\$ 1,756,000	Sales > \$2.5M	Sales < \$2.5M	2%	\$500
Kodiak	\$ 9,405,000		Required	2%	no limit
Kotzebue	\$ 3,480,000	Required		5% for early payment	\$100
Nome	\$ 4,651,000	Required		3%	\$35
Palmer	\$ 5,207,000	Required		none	n/a
Petersburg	\$ 2,646,000	Required		1%	\$50
Sitka	\$ 8,507,000		Required	3% if prepaid monthly	\$100 per quarter
Skagway	\$ 4,089,000		Required	Greater of \$10 or 0.5%	\$100
Wasilla	\$ 11,853,000	Required		2%	\$100
Wrangell	\$ 2,291,000		Required	none	n/a

UNALASKA CURRENTLY		Required	2% if prepaid monthly	no limit
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UNALASKA - PROPOSED	Tax > \$5K/mo	Tax < \$5K/mo	2% if prepaid monthly	\$100 per month
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CITY OF UNALASKA
P.O. BOX 610
UNALASKA, ALASKA 99685
PHONE (907) 581-1251
FAX (907) 581-1417

MONTHLY PREPAYMENT FORM SALES TAX

YEAR: _____ MONTH: _____

QTR ENDING: 3/31 ☐ 6/30 ☐ 9/30 ☐ 12/31 ☐

BUSINESS NAME: _____

BUSINESS LIC #: _____

ADDRESS: _____

1. **GROSS RECEIPTS FOR MONTH (INCLUDING SALES TAX)** \$ _____
2. **NON-TAXABLE RECEIPTS** \$ _____
3. **ADJUSTED GROSS RECEIPTS (Subtract line 2 from line 1)** \$ _____

DETERMINATION OF TAXABLE RECEIPTS:

4. **DIVIDE** LINE 3 BY 1.03 \$ _____

DETERMINATION OF TAX DUE:

5. **MULTIPLY** LINE 4 BY .03 — **SALES TAX DUE** \$ _____
6. **DISCOUNT:** (IF APPLICABLE) MULTIPLY LINE 5 BY .02 \$ _____
7. **CREDIT FOR SALE FOR RESALE REFUND** \$ _____
8. **NET PAYMENT DUE (Subtract line 6 and line 7 from line 5)** \$ _____

TO BE ELIGIBLE FOR THE 2% DISCOUNT, PAYMENT MUST BE RECEIVED AT CITY HALL OR POSTMARKED ON OR BEFORE THE 10TH OF THE MONTH FOLLOWING THE MONTH THAT RECEIPTS WERE RECEIVED.

THIS REPORT MUST BE FILED FOR EACH MONTH IN THE QUARTER IF DISCOUNT IS CLAIMED FOR ANY MONTH. QUARTERLY SALES TAX REPORTS MUST BE FILED AT THE END OF EACH QUARTER IN ADDITION TO PREPAYMENT FORMS.

SIGNATURE

DATE

TITLE

BLUE COPY: CITY OF UNALASKA

YELLOW COPY: TAXPAYER

MEMORANDUM TO COUNCIL

TO: MAYOR AND CITY COUNCIL MEMBERS
THROUGH: CHRIS HLADICK, CITY MANAGER
FROM: ELIZABETH MASONI, CITY CLERK
DATE: OCTOBER 19, 2012
RE: TITLE 6.40 SALES TAX REVISIONS

SUMMARY: UCO Title 6.40 governs the levy and collection of sales tax. For some time, staff has been working on revisions to Title 6.40, Sales Tax, and, in the next few weeks, anticipates presenting proposed amendments for Council consideration.

PREVIOUS COUNCIL ACTION: In late 1998, the City Attorney and City Clerk brought Title 6 forward for Council discussion and revision. It was proposed to begin a concerted effort to bring Title 6, more specifically the tax sections, into line with what the actual practice was.

In 2003, the Attorney and Clerk, once again, brought Title 6 forward for Council discussion and, ultimately, for revision. At that time, the three tax chapters were not consistent with one another, primarily because they were adopted at different times.

BACKGROUND: Prior to 2003, the City issued exemption certificates to licensed businesses that made purchases for resale. The certificates did not specify the categories of goods covered. As a consequence, the use of certificates put an unfair burden on sellers in that it required them to determine whether any particular purchase was really for resale, and made it easy for unscrupulous business owners to use their tax exempt cards to avoid paying sales tax on supplies and personal items that were not eligible for exemption.

In an effort to correct the problem of having exemption certificates put to unauthorized uses, the Unalaska Code of Ordinances was amended in 2003 to require that resellers pay tax on all of their purchases and then request that the City refund to the amount of tax they paid on items they purchased for resale.

DISCUSSION: While we believe that the change in the Code in 2003 did reduced the incidences of unlawful sales tax avoidance, it has, in practice, created other problems that were not foreseen when the Code revision was passed.

One negative consequence of the change in Code is that it puts businesses that purchase most of their inventory locally at a competitive disadvantage to those that have the bulk of their inventory shipped in. The additional recordkeeping and reporting requirements imposed for local purchases of inventory create an administrative burden that non-local purchasers do not bear. In addition, the requirement that a business making local purchases must pay sales tax and then wait for a refund has a negative impact on cash flow for local purchasers. This combination of factors creates incentive for local businesses to order from non-local sources whenever possible.

The administrative burden is particularly unwieldy for contractors. Below is a hypothetical situation that illustrates this problem:

A fire alarm contractor purchases wire locally for inclusion in a fire alarm system the contractor is installing in a building that is under construction. The contractor pays sales tax when she purchases the wire. The fire alarm company is a sub-contractor to an electrical contractor who pays sales tax when he pays for the fire alarm system that includes the wire. The general contractor pays sales tax to the electrical contractor for the entire electrical sub-contract, which, of course, includes the wire. All three parties have paid sales tax for the same wire, and all three parties will have to file requests with the City to get the tax back. The owner of the building for whom the general contractor works is the only one who will pay sales tax on that wire without requesting a refund.

We are proposing changes to the sales tax ordinance that we believe will strike a balance between curbing tax avoidance and lessening the administrative burden of tax compliance. Under this plan, resellers will be issued sales tax exemption cards that are specific to their line of business, which will greatly reduce the possibility of exemption cards being misused for the purchase of items that are not intended for resale. Businesses making tax exempt purchases will keep their receipts on file with their other business records. The City will encourage compliance by including examination of tax exemption records as a part of the regular sales tax audit program that is already in place.

We also propose reducing the compensatory collection discount for those businesses that report monthly. Currently, businesses that report their sales tax on a monthly basis are given a 2% discount each month. In FY12, the top five businesses that reported and paid sales tax on a monthly basis were discounted a total of \$182,887.49. We propose requiring that those businesses with a tax liability that exceeds \$5,000 per month report and pay sales tax on a monthly basis. We further propose limiting the compensatory discount to a maximum \$100 for each monthly payment.

In addition to this major change in handling of tax exempt transactions, we are proposing the following changes that clarify or strengthen other provisions of the Code. These changes are explained below with page numbers referring to the attached section of Code:

- §6.40.010(F)(4) (Page 2) clarifies the requirement that services or rentals purchased for resale must be clearly identifiable on the invoice to the final consumer.
- §6.40.010(F) (Page 3) exempts sales to registered non-profit organizations and governmental agencies from the requirement that a resale must be taxable in order for the purchase of the item re-sold to be tax exempt.
- §6.40.030(B) (Page 5) clarifies the definition of “Casual Sale.”
- §6.40.030(E) (Page 5) defines the requirement that, in order to qualify for exemption, items purchased pursuant to the construction of new residential housing must be component parts of the constructed improvements.

- §6.40.030(L) (Page 6) clarifies the Governmental Agency exemption and removes City sales from this section, to be added in §6.40.030(Y - AA) below.
- §6.40.030(O) (Page 6) adds “behavioral health” to the list of medical services that are tax exempt.
- §6.40.030(U) (Page 6) makes a grammatical correction.
- §6.40.030(Y – AA) creates separate provisions for the City of Unalaska, thereby including the City sales that were previously included under §6.30.030(L).
- §6.40.040(C – E) (Pages 7 – 8) adds the exemption certificate requirements.
- §6.40.040(F)(4) (Page 8) adds language authorizing the City Manager to revoke an exemption certificate that is being used unlawfully.
- §6.40.040(G) (Page 8) removes the seller’s liability for uncollected tax on ineligible sales, providing that the sale was made in good faith in compliance with the requirement to examine the exemption card and properly record the details of the sale.
- §6.40.040(H) (Page 8) reflects information that was previously included under §6.40.040(A) and (B).
- §6.40.050(A) (Page 9) is stricken in its entirety; this section defined the previous requirement that tax be collected on tax-exempt sales and later refunded by the City to the purchaser.
- §6.40.050(A) (Page 9) is new language added for clarification, and to add the requirement that an invoice copy must be provided when making a claim for a refund.
- §6.40.070(B) (Page 11) adds a requirement that businesses with a tax liability exceeding \$5,000 per month file and pay their sales tax monthly instead of quarterly.
- §6.40.090 (Page 13) clarifies language and limits the collector’s compensatory discount to \$100 per month.
- §6.40.100(4) (Page 14) provides clarification.
- §6.40.120 (Page 15) specifies that records of exempt sales and purchases are subject to the existing recordkeeping requirements and are subject to audit.
- §6.40.130 and 135 (Pages 15 – 19) contain language added by the City Attorney to strengthen the City’s ability to collect taxes owed.
- §6.40.140(A) (Page 19) confirms the City’s ability to adopt procedures, forms, and guidelines for the administration of the sales tax ordinance.

ALTERNATIVES: Council may accept all, some, or none of the suggested revisions. Council is also free to proposed additional revisions to UCO Title 6.40.

FINANCIAL IMPLICATIONS:

LEGAL: City Staff has been working and will continue to work with the City Attorney on revisions to Title 6.

STAFF RECOMMENDATION: Staff anticipates bringing this information back to Council in the form of an ordinance for a first reading at the November meeting.

PROPOSED MOTION: This is for information purposes.

CITY MANAGER'S COMMENTS: I approve of the suggested changes to Title 6.40.

Attachments:

- Redlined Title 6,40

CHAPTER 6.40: SALES TAXES

Section

6.40.010	Definitions
6.40.020	Levy of tax
6.40.025	Tax schedule
6.40.030	Exemptions
6.40.040	Exemption procedures
6.40.050	Application for tax refund
6.40.060	Collection of tax
6.40.070	Remittance of tax collected
6.40.080	Form of return
6.40.085	Returns and information declared confidential; exemptions
6.40.090	Collector's compensatory collection discount
6.40.100	Procedures on delinquencies
6.40.110	Period of limitation
6.40.120	Record keeping and audit
6.40.130	[Reserved]
6.40.140	Tax rulings

6.40.010 DEFINITIONS

For the purposes of this Chapter, unless the context otherwise requires, the following words and phrases shall have the meanings defined herein.

(A) "CONSUMER" means the person who, in the ordinary meaning of the term, takes title to, takes possession of, or rents property, or receives services for a consideration.

(B) "MADE IN THE CITY" means:

(1) A sale resulting from an offer being communicated from a seller to a consumer within the City and accepted by the consumer within the City; or

(2) Services and rentals performed wholly within the City; or

(3) Services and rentals performed partially within the City where the end result of the services or rental performed occurs in the City; or

(4) Services performed outside the City in connection with construction of a structure or improvement to real or personal property located within the City.

Situations excluded are where separation of the goods from the stock of the seller takes place at the point of delivery and is outside the boundaries of the City, including such items as oil deliveries, telephone service, television service and electric power service.

(C) "NEW RESIDENTIAL HOUSING" means an original building or portion of a building (not the renovation of an existing building) intended for use exclusively as an apartment, apartment house, or dwelling, as those terms are defined in 8.06.020. A boarding house, bunk house, group house, guest house or cottage, hotel, lodging house or motel, professional office, rest home, or rooming house as those terms are defined in 8.06.020 shall not be considered new residential housing.

(D) "OFFER" means any oral or written communication to a person making a presentation to buy or sell any goods or services or to rent any property.

(E) "RENTING OR RENTAL OF PROPERTY" means a person using the property owned by another for a consideration.

(F) "RESALE" OR "SALE FOR RESALE" means:

(1) A sale of personal property to a wholesale or retail dealer for the purposes of resale by that wholesale or retail dealer where the item is resold per se and is not for the wholesale or retail dealer's own consumption, use, storage or distribution and where the resale is subject to City sales tax;

(2) A sales of personal property as raw material to a person engaged in manufacturing for sale, where the personal property sold becomes an ingredient or component part of a product manufactured for sale by the manufacturer and where the sale of the manufactured product is subject to City sales tax;

(3) A sale of personal property as raw material to a licensed building contractor where the property sold becomes a component part of the product sold by that building contractor and where the sales of the manufactured product is subject to City sales tax;

(4) A sale of services or rental of personal property to a business, the charge for which will be separately identified on billing from passed directly by that business to a specific buyer and the sale to the buyer is subject to City sales tax, except that provision of meals, temporary lodging, utilities, vehicle rentals, fuel and other like items shall in no case fall within this exemption.

If the resale transaction meets all other requirements but is not subject to City sales tax due to the consumer's status as a non-profit organization registered with the City of Unalaska, or as an agency of the State of Alaska or the United States government, then it will qualify as a sale for resale.

(G) "RETAIL SALE OR SALE AT RETAIL OR SALE" means every sale, lease, rental, transfer or assignment of any right, title or interest in any goods, personal property of any kind and whether tangible or intangible, real property and any provision of labor or services for a consideration made to a consumer in the regular course of business.

(H) "SALE OF SERVICES" means the selling price received for furnishing labor and materials incidental to the labor required to install, construct, repair or complete specified results or end products. Descriptively, sale of services includes but is not limited to:

(1) The admission price charged for entering or staying in any place of entertainment including theaters, exhibitions, games, races where admission is by tickets, gate charges, seat charges, box charges, season pass charges, or cover charges.

(2) The selling price of subcontracts in building construction which shall be in addition to the total selling price set forth in the next subsection 3.

(3) The selling price of constructing buildings or other improvements to real estate.

(4) Commissions or fees by brokers or agents in such transactions as real estate sales.

(5) Furnishing advertising through the medium of newspapers and periodicals or radio and television broadcasting services except to recognized national agencies.

(6) Furnishing services of an insurance or bonding agency, the cost of which is not included in the premium price.

(7) Banking services such as rental of safety deposit boxes, services for handling loans, brokering loans and handling accounts, appraisal fees, and similar services.

(8) The provision of other services for fee such as accounting, hairdressing, barbering, janitorial, handyman, landscaping, freight forwarding, warehousing, repairs to real or personal property, lodging accommodations, and the furnishing of labor and materials for accomplishing a specific result.

Sale of services excludes wages, salaries and other forms of payment for labor performed for an employer.

(I) "SELLER OR COLLECTOR" means every entity or person, whether acting as principal, agent, broker, or lessor, making sales at retail or rental of property to a consumer and who is required and responsible to collect and remit sales taxes levied by the City of Unalaska.

(J) "SELLING PRICE" means the consideration, whether money, credit, rights or other property, expressed in the terms of money, paid or delivered by a consumer to a seller. Descriptively, selling price:

(1) Shall be without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, delivery costs, taxes or any other expenses whatsoever paid or accrued and without any deduction on account of losses.

(2) Includes any federal or state excise tax on the sale.

(3) Does not include the value of used articles intended for resale taken in trade as a credit or part payment on the sale of a new or used article. This amount shall be deductible from the total sales price of the new or used article being sold and the tax paid only on the net sales price.

6.40.020 LEVY OF TAX

A sales tax is levied on all sales, rents and services made in the City at the rate of three percent (3%) of the selling price. The burden of this tax rests upon the consumer. This tax shall not be levied on raw seafood products taxed pursuant to Chapter 6.44. The tax on services shall not include salaries or wages received by an employee from an employer, but shall include consideration for furnishing labor and materials for accomplishing a specific result.

6.40.025 TAX SCHEDULE

The amount of tax to be added to the lease, rental, transfer or assignment of any right, title or interest in any goods, personal property of any kind, real property and any provision of labor or services for a consideration shall be in accordance with the following schedule:

<u>Price</u>	<u>Tax</u>
\$0.01 - \$0.30	\$0.01
\$0.31 - \$0.60	\$0.02
\$0.61 - \$1.00	\$0.03

6.40.030 EXEMPTIONS

The following retail sales are exempt from taxation subject to any additional procedures described in this Chapter:

(A) AIR TRAVEL. The sales of fares charged for travel by aircraft are exempt. The fees and charges charged by travel agents are exempt.

(B) CASUAL SALES. A casual and isolated sale not made in the regular course of business is exempt. For purposes of this exemption, a sale is not casual and isolated if it is made pursuant to a business license, or by sellers representing themselves to be in the business of making such retail sales, rentals or services, or if it includes business personal property leased or rented in the regular course of business engaged in by that seller. Under this exemption a one-time liquidation of a business shall be considered a casual sale provided that the business is properly licensed and files a final sales tax return with the City as provided in 6.40.040 (D) or (E).

(C) CHILD CARE SERVICES. The sale of child care services is exempt.

(D) CHURCH SALES. The gross receipts or gross proceeds derived from the sale of tangible personal property or services by churches, except where such organizations may be engaged in business for profit or savings, competing with other persons engaged in the same or similar business. A sale to a church organization is exempt.

(E) CONSTRUCTION OF NEW RESIDENTIAL HOUSING. The sale of services or goods- materials for the construction of new residential housing -is exempt if the materials become incorporated as a permanent part of a structure or site through work authorized by a building permit. A sale in which the product sold does not become a physical part of the property being constructed is taxable.

(F) COURT FIXED FEES. Any sale where the price is fixed by law, by a court of competent jurisdiction, or by other authority beyond the control of the seller, is exempt.

(G) DUES AND FEES. Dues or fees paid to clubs, labor unions, professional organizations and fraternal organizations are exempt.

(H) EXPORTS. A sale is exempt if made to a person in a foreign country for shipment out of the United States except where the goods or products sold are exported in bond for reentry into the United States. This exemption does not exempt sales made to foreign vessels or persons on foreign vessels while in the port in the City.

(I) FEDERAL AND STATE PROHIBITIONS. A sale which the City is prohibited from taxing under the constitution and laws of the United States or under the Constitution and laws of the State of Alaska is exempt.

(J) FOOD STAMPS. Purchases made with food coupons, food stamps, or other type of certificate issued under 7 U.S.C. 2011-2025 (Food Stamp Act).

(K) FREIGHT, DELIVERY AND WHARFAGE. Wharfage charges, whether arising out of foreign, interstate or intrastate commerce, are exempt. Freight and delivery charges are exempt where there is one invoice or bill from a single vendor or carrier and where there is delivery from a point of origin outside the City to any point in the City or where there is delivery from a point inside the City to a point

outside the City. Freight and delivery charges for services rendered for delivery of any personal property where the delivery and associated charges both commence and terminate within the City are not tax exempt. Warehouse and storage services are not exempt and are taxable. For purposes of this exemption, delivery charges mean any costs or charges whatsoever imposed on the sale of freight, shipping, courier, wharfage and postal services, excepting postal delivery costs or charges for services rendered by the United States Postal Service.

(L) GOVERNMENTAL AGENCIES. A sale directly to the United States government, or to the State of Alaska and its political subdivisions, ~~or to the City~~ including any departments thereof, is exempt. This exemption applies only where the sale is paid for directly by the governmental entity to the seller. A construction contract awarded by the United States government, or by the State of Alaska, or a subcontract awarded in connection with the project funded under the construction contract, is tax exempt. A sale to a government contractor in which the product sold does not become a physical part of the property being constructed for any of the above governments is taxable. For purposes of this subsection, a physical part of the property means the article is easily and readily identifiable in the property constructed. ~~This exemption applies only where the sale is paid for directly by the governmental entity or non-profit organization to the seller. Sales made by the City of Unalaska are exempt.~~

(M) INSURANCE. The sale of insurance policies, guaranty bonds and fidelity bonds are exempt.

(N) LOANS. The loaning of money and interest charged for loans is exempt.

(O) MEDICAL SERVICES AND SALES. Medical, dental, optometric, chiropractic, behavioral health, and hospital services rendered by a person licensed by the State of Alaska are exempt. The sale of hearing aids and medicinal preparations when prescribed by a licensed practitioner are exempt.

(P) NEWSPAPERS. The sale of newspapers and periodicals to a consumer by a carrier is exempt.

(Q) NONPROFIT ORGANIZATIONS. Sales made by nonprofit charitable organizations as defined in Section 501(c) of the Internal Revenue Code are exempt. A sale made to a nonprofit charitable organization as defined in Section 501(c) of the Internal Revenue Code is exempt.

(R) PUBLIC FOOD. The sale of food and beverages to the public in public school cafeterias or lunchrooms which are operated primarily for teachers and students and not for profit is exempt.

(S) RAW SEAFOOD PRODUCT. The sales of raw seafood product that are subject to Chapter 6.44 are exempt.

(T) RESALE. A sale for resale as defined in this Chapter is exempt.

(U) SEAFOOD PROCESSORS AND BROKERS. A sale of processed seafood product or the sale of custom processing services by a seafood processor to another seafood processor or to a seafood broker is exempt. For purposes of this subsection, a seafood processor or broker means a person or entity which processes raw seafood product as defined in 6.44.010(D) or who acts as an intermediary between

a consumer and a seafood processor and who purchased processed seafood product from a seafood processor exclusively for resale, regardless of whether subsequent sale is subject to City sales taxation. The sale of processed or raw seafood customarily used as bait is not exempt under this section.

(V) STUDENT TRANSPORTATION. The service of transporting students to and from school in vehicles is exempt.

(W) TELEPHONE AND TELEGRAPH. The sale of telephone, telegraph, and internet service is exempt. The sale of pre-paid telephone cards is exempt.

(X) UTILITY SALES. The sale of utility service by a public utility is exempt.

(Y) CITY SALES. Sales made by the City of Unalaska are exempt.

(Z) SALES TO CITY. A sale made to the City of Unalaska is exempt.

(AA) SALES RELATED TO CITY PUBLIC WORKS PROJECTS. A construction contract awarded by the City, or a subcontract awarded in connection with the project funded under the construction contract, is tax exempt. A sale to a City contractor in which the product sold does not become a physical part of the property being constructed is taxable. For purposes of this subsection, a physical part of the property means the article is easily and readily identifiable in the property constructed.

6.40.040 EXEMPTION PROCEDURES

(A) NON-PROFITS. No seller may allow an exemption under 6.40.030(Q) unless the consumer first obtains a certificate of exemption for non-profit organizations and presents it to the seller at the time of the sale or identifies the certificate by giving its number at the time of the sale. ~~The burden of establishing any tax exemption is on the claimant.~~

(B) SEAFOOD PROCESSORS AND BROKERS. No seller may allow an exemption under 6.40.030(U) of this Chapter unless the sale is of processed seafood product processed by the seller and the consumer first obtains a certificate of exemption for seafood processors and brokers and presents it to the seller at the time of the sale or identifies the certificate by giving its number at the time of the sale. ~~The burden of establishing any tax exemption is on the claimant.~~

(C) SALES FOR RESALE. No seller may allow an exemption under 6.40.030(T) unless the wholesale or retail dealer, person engaged in manufacturing, or licensed building contractor first obtains a certificate of exemption for the specific category of goods for which the exemption is claimed and presents it to the seller at the time of sale.

(D) NEW RESIDENTIAL CONSTRUCTION. No seller may allow an exemption under 6.40.030 (E) unless the property owner or contractor building the new residential construction obtains a certificate of

exemption for the specific property or project for which the exemption is claimed and presents it to the seller at the time of sale.

(E) CITY OF UNALASKA PUBLIC WORKS PROJECTS. No seller may allow an exemption under 6.40.030(AA) unless the contractor or subcontractor building the public works project obtains a certificate of exemption for the specific project for which the exemption is claimed and presents it to the seller at the time of sale.

~~(C)~~ EXEMPTION CERTIFICATES.

(1) An application for an exemption certificate shall be signed by the consumer where based on the consumer's tax exempt status. The application shall contain the information reasonably required by the City Clerk.

(2) Sellers, other than non-profits, exempt from collecting tax under 6.40.030 are not required to obtain an exemption certificate in order to be exempt from the collection and remittance of sales tax on their qualifying sales so long as they maintain a current City of Unalaska business license or are a governmental entity exempt under 6.40.030~~(H)~~(L or Z).

(3) The seller shall indicate the certificate number of the consumer on the sales slip and shall account for these sales requiring a certificate of exemption on their sales tax return.

(4) The City Manager or designee may permanently revoke an exemption certificate if the consumer entitled to the exemption has been found to have used the exemption certificate to obtain an exemption to which the certificate holder is not entitled or has permitted another to use the exemption certificate to obtain an exemption to which the other person is not entitled.

~~(G)~~ OTHER EXEMPT SALES. A seller shall determine in the first instance whether a sale is exempt under this chapter, ~~with the exception of exemptions claimed under 6.40.030(E) which shall be administered under 6.40.050(A).~~ If a seller fails to document tax exempt sales by completing forms provided by the City identifying the category and exemption certificate number in good faith and submitting completed forms with the seller's sales tax return~~incorrectly determines that a sale is exempt, and does not collect the tax from the consumer~~, then the seller is liable to the City for the uncollected tax, plus any applicable interest and penalty. Should a dispute arise between the consumer and seller as to whether or not any sale is exempt from taxation under this Chapter, the seller shall collect and the consumer shall pay the tax and the seller shall issue to the consumer a receipt or application for refund form as prescribed by the City Clerk showing the names of the seller and the consumer, the items purchased, the date, price, amount of tax paid, and a brief statement of the basis for the claim of exemption.

(H) The burden of establishing any tax exemption is on the claimant.

6.40.050 APPLICATION FOR TAX REFUND

~~(A) BUYER: SALE FOR RESALE AND NEW RESIDENTIAL CONSTRUCTION.~~

~~—(1) Where a claim for exemption is based upon the exemption of sale for resale or new residential construction, the tax shall be collected by the seller and remitted to the City, notwithstanding the procedures outlined in 6.40.040(C).~~

~~—(2) Sale for Resale: The buyer claiming the exemption for sale for resale shall present their sales receipts and an invoice or receipt indicating the subsequent sale, to the City Clerk along with a form prescribed by the City to request a refund. The request for refund shall be submitted with the sales tax returns. A buyer shall not be eligible to claim a sale for resale exemption if they have not remitted tax on the subsequent resale to the City or filed a tax return demonstrating that the resale was not subject to tax due to the status of the buyer at resale (i.e. governmental entity). Claim for exemptions not submitted within one (1) year from resale are barred.~~

~~—(3) New Residential Construction: A buyer claiming the exemption of new residential housing shall present their sales receipts to the City Clerk, along with a form prescribed by the City to request a refund. The buyer shall submit a copy of the City of Unalaska building permit for the new residential construction, as proof of new housing, with the initial request for refund. Claim for exemptions not submitted within two (2) years of date of building permit are barred.~~

~~—(4) The City Clerk, or designee, shall make a determination for eligibility of a refund within sixty (60) days of the receipt of the request for refund.~~

~~(AB)~~ BUYER/CONSUMER: OTHER REFUNDS, REFUND OF TAX PAID.

(1) An application for tax refund may be filed by any consumer where:

(a) The consumer believes the sale to be excepted or exempt from taxation; and

(b) The consumer has paid the sales tax levied by the City at the time of the sale; and

(c) The consumer files the application with the City within one (1) year of the date of the sale on a form prescribed the City or by written notice containing the names of the seller and the consumer, the items purchased, the date, the price, the amount of tax paid, and a brief statement of the claim of exemption. A copy of the invoice or sales receipt must be attached to the refund application.

(2) This subsection does not apply to refund claims based upon the consumer's status as a senior citizen.

~~(BC)~~ COLLECTOR: OVER PAYMENT REFUND. If a collector has remitted sales tax in excess of what is due to the City, the collector may apply to the City for a refund within one (1) year of the date the overpayment was made. The City shall audit the collector's account and may request any additional information the City requires to determine that a refund is due. If the City determines that a refund is due, the collector may take a credit on the next sales tax report, or the City shall pay the refund of the tax paid with interest at three and one-half percent (3.5%) per annum beginning thirty (30) days from

the date of payment of the tax to the City. A claim for refund not filed within one (1) year of the date the tax was remitted to the City is forever barred. A collector may claim a refund only where the collector has filed a timely sales tax return and therewith remitted the sales taxes due under that return. This section does not apply to claims for exemptions for sale for resale for which any refund claim should be made pursuant to 6.40.050(A).

(C) SENIOR CITIZEN REFUND. Natural persons of at least sixty-five (65) years of age on or before March 31 of each year shall be entitled to receive a yearly sales tax refund in the amount of two hundred dollars (\$200).

(1) To be eligible for the refund, the consumer must be sixty-five (65) years of age or older by March 31 of each year, be a resident of the City for at least thirty (30) days prior to their application, and file a timely application for refund with the City. The application form may require the consumer-applicant to provide proof of age and of residency, along with other information reasonably necessary to administer this refund. The claim for refund may be made only by filing a timely application with the City Clerk.

(2) An application for a senior citizen refund must be filed with the City between January 1 and March 31 of each year. Claims for refund filed after March 31 of each year shall be denied.

(3) Any eligible applicant who has a delinquent account of any kind with the City shall not be entitled to receive their refund directly. The City shall, instead, apply the refund to the delinquency. Only once the delinquency is paid may any surplus refund be directed to the eligible recipient.

(4) "Resident of the City," for the purposes of this subsection, means a person who is physically present in the City with the intent to remain indefinitely in the City and to make a home in the City. The individual must also have maintained a principal place of abode in the City for at least thirty (30) consecutive days immediately preceding the date of application for a refund. A person demonstrates the intent required under this section through establishing and maintaining customary ties indicative of residence in the City and through the absence of those ties elsewhere. Physical presence in the City is not, by itself, sufficient to establish residency.

(E) The City Clerk shall prepare applications for refunds for exempt sales and for senior citizens refunds. Applications shall be available at City Hall. A collector shall provide a consumer with an application for refund where the consumer has paid the tax and desires to request a refund from the City because the consumer believes the sale is exempt, but was not provided an exemption at point of sale.

6.40.060 COLLECTION OF TAX

(A) A collector shall add the three percent (3%) sales tax to the selling price which the collector collects at the time of the sale or at the time of collection with respect to credit transactions. The tax is a debt from the consumer to the collector until paid and is recoverable at law in the same manner as other debts. Notwithstanding the liability of the consumer, taxes collected or which should have been

collected by the collector under this Chapter are monies of the City for which the collector is at all times liable to the City.

(B) Collectors shall add the tax levied in this Chapter to the selling price, rent or service charge in accordance with this Chapter, showing the tax as a separate and distinct item. The tax imposed on the sale of more than one separately priced item may be shown as a total tax on the aggregate price of all items purchased and delivered at one time.

(C) The sales tax may be included in the selling price of sales made through coin-operated devices, sales of food and beverages at concession stands and other places with high customer volume, metered sales where the sales price is computed by the metering device, admissions, and other taxable sales where the City determines buyer and seller convenience would be substantially enhanced, upon written authorization from the City. A notice explaining that the sales tax is included in the selling price will be posted at the premises, or on the device.

6.40.070 REMITTANCE OF TAX COLLECTED

Collectors shall complete and file required returns and remit the tax collected in accordance with the following schedule.

(A) QUARTERLY. Unless as otherwise provided for in this Section, collectors shall on or before the last day of the month succeeding the end of each quarter year ending March 31, June 30, September 30, and December 31, prepare a return for the preceding quarter year upon forms furnished by the City. Returns shall be filed personally at City Hall by five (5) p.m. or postmarked on the last day of the month following the end of each quarter year. In the event the last day of the month falls on a legal holiday or weekend, then the return may be filed on the first business day following.

(B) MONTHLY. If a collector incurs a sales tax liability of five thousand dollars (\$5,000) or more during any month the collector shall file a monthly return on or before the tenth (10th) day of the month following the month in which the liability was incurred. The collector shall continue to file monthly returns thereafter, except that if the collector's monthly liability falls below five thousand dollars (\$5,000) for six consecutive months, that collector may apply to the City Clerk to be placed on a quarterly filing schedule. If a collector chooses to file monthly returns, in order to qualify for a compensatory collection discount per 6.40.090, monthly filings must be continuous for all months in a quarter. If a collector fails to file or is late in filing returns for two (2) of the last four (4) quarters, the City Clerk may require the collector to submit returns and payment for each month.

(C) ITINERANT SELLER. A person doing business within the City who is liable for an itinerant nonresident business license on less than an annual basis, shall file a sales tax return and remit in full the tax shown as due within twenty-four (24) hours following the expiration of their license, but in any event prior to leaving the City.

(D) **SALE OF BUSINESS ASSETS TO ANOTHER.** A collector who sells their business, business inventory, or accounts receivable to another shall make a final sales tax return within fifteen (15) days after the date of sale. The purchaser of the business, business inventory, or accounts receivable shall withhold a portion of the purchase money sufficient to pay the sales tax, penalties and interest that may be due until the seller displays a receipt from the City showing that all tax obligations imposed by this Chapter have been paid. If any purchaser of a business, business inventory, or accounts receivable fails to withhold this sum, the purchaser shall be personally liable for the taxes, penalties and interest owed by the seller to the City. The City may continue to make efforts to collect the tax from the person or entity who owned the business or accounts receivable at the time the liability was incurred.

(E) **UPON TERMINATION OF BUSINESS ACTIVITIES.** If a collector terminates their business without the benefit of a purchaser, successor, successors or assigns, the collector shall make a final return and settlement of tax obligations within fifteen (15) days of the termination of business.

(F) **FILINGS TO BE CONTINUOUS.** A collector which has filed a sales tax return will be presumed to be making sales in successive quarters unless that collector files a return showing termination or sale of the business.

6.40.080 FORM OF RETURN

On forms furnished by the City and available at City Hall, the collector shall furnish the following information, sign the form and certify that the form correctly states the information set forth therein. The sales tax return shall set forth:

(A) Total transactions divided into all taxable and nontaxable transactions.

(B) A substantiation of transactions exempt from the tax by virtue of 6.40.030 outside City by a listing of:

(1) The amount of the transaction or group of similar transactions;

(2) The means by which the order was received;

(3) The point to which the transaction was delivered;

(4) The means of transportation used for delivery of the goods.

(C) A substantiation of sales exempt from tax by virtue of 6.40.030(L) governmental agencies.

(D) A substantiation of all other sales claimed exempt.

(E) The amount of tax due

(F) Such other information as may be reasonably required.

6.40.085 RETURNS AND INFORMATION DECLARED CONFIDENTIAL; EXEMPTIONS

Returns filed with the City for the purpose of complying with the terms of this Chapter and all data obtained from such returns are confidential, and such returns, and data obtained shall be kept from inspection by all private persons, except as necessary to investigate and prosecute violations of this Chapter. Nothing contained in this section shall be construed to prohibit the delivery to a person, or their duly authorized representative, of a copy of any return or report filed by them, nor to prohibit the publication of statistics so classified as to prevent the identification of particular buyers or sellers, nor to prohibit the furnishing of information on the reciprocal basis to other agencies of the State of Alaska or the United States concerned with the enforcement of tax laws.

6.40.090 COLLECTOR'S COMPENSATORY COLLECTION DISCOUNT

Any collector of sales tax shall be ~~paid~~ **allowed to compensate themselves for costs incurred in the collection and remittance of the tax imposed by taking** an amount equal to two percent (2%) of the gross sales tax collected **as a discount to reduce the tax to be remitted on any monthly return**, provided that the sales tax return is filed and the sales tax is paid to the City on or before the tenth (10th) of each month immediately following the month in which the collection is made. **The deduction may not exceed one hundred dollars (\$100.00) for any monthly filing period and may not be taken if any sales tax, penalty or interest is due for any previous filing period.** A collector shall only be entitled to the compensatory collection discount provided the collector has filed **timely** tax returns on a monthly basis for the entire quarter. If a collector claims a compensatory collection discount that they are not entitled to, the City will consider it as taxes unpaid, and may seek collection per UCO 6.40.100. Penalty and interest will apply.

6.40.100 PROCEDURES ON DELINQUENCIES

(A) **PENALTY.** A penalty equal to five percent (5%) of the delinquent tax shall be added to the tax for the first month, or any part thereof, and an additional five percent (5%) shall be added to the tax due for each month, or fraction thereof, of delinquency until a total penalty of fifteen percent (15%) of the tax due has accrued. The penalty shall be assessed and collected in the same manner as the tax is assessed and collected.

(B) **INTEREST.** In addition to the penalty provided in subsection (A) above, interest assessed on delinquent tax shall accrue at the rate of ten percent (10%) per annum. Interest shall accrue from the date of delinquency until paid in full and shall be collected in the same manner as the delinquent tax is collected.

(C) PRIORITY FOR CREDITING PAYMENTS. All payments received shall be applied in the following order:

- (1) Penalties due, beginning with the oldest penalty;
- (2) Interest due, beginning with the interest due on the oldest month; and
- (3) Taxes due, beginning with the taxes due from the oldest month.

(D) WRITTEN DEMAND AND ADDITIONAL PROCEDURES. If a collector fails to file the return or make the remittance in accordance with 6.40.070 or 6.40.080, the City may do any or all of the following things:

- (1) Criminal action. File a criminal complaint against the collector for violation of this Chapter.
- (2) Civil action. File a civil complaint against the collector for violation of any obligation in this Chapter.
- (3) Make a sales tax assessment against the collector, with the assessment based upon an estimate of the gross revenue received by the collector during the period and institute civil action to recover the amount of the sales tax, interest, and penalty due and to request injunctive relief. The estimate of gross revenue may all be derived from past sales tax returns of the seller or their predecessor, the general economic level of the business community, information from sales tax audits conducted by the City, if available, returns of comparable businesses and any other information believed to be reliable or helpful to the City in making an estimate of the sales tax due. Notice of the estimated assessment of sales taxes due shall be furnished the collector by the City via first-class mail the last known address of the collector or via hand-delivery to the collector and the estimated assessment shall become final for the purposed of determining liability of the collector to the City after thirty (30) days of the date of mailing or hand-delivery of the estimated assessment to the collector unless the collector earlier files with the City an accurate sales tax return, supported by satisfactory records or documentation of sales made, indicating a lesser liability.

(4) The tax, interest and penalty imposed under this Chapter shall constitute a lien in favor the City upon all the property of the collector or taxpayer whether tangible or intangible and wherever located. The lien arises upon delinquency and continues until the liability is satisfied or the lien is foreclosed. The lien is not valid as against a mortgagee, pledgee, purchaser or judgment lien creditor until notice of the lien is filed in the office of the recorder for the Aleutian Islands or Anchorage recording district. The manner provided for recording Federal tax liens under AS 40.19.010 et seq. are by this reference incorporated herein as if set forth in full.

6.40.110 PERIOD OF LIMITATION

The amount of any sales tax imposed under this Chapter may be determined and assessed at any time within a period of six (6) years after the sales tax became due and payable. The period shall begin on the date when a return is required to be filed. Where no sales tax return has been filed, or where a fraudulent return has been filed, then the period of limitation does not begin to run until discovery of the delinquency or fraud occurs. No proceeding for the collection of the sales tax shall be begun after the expiration of this period.

6.40.120 RECORD KEEPING

(A) Every collector shall retain for a period of six (6) years all of the sales tax returns, reports, forms, records and supporting schedules as may be necessary to determine the amount of tax required to be collected. ~~All such records and documentation shall be made available for examination at reasonable times by the City or agents of the City, for the purpose of ascertaining the correctness of a return or for the purpose of determining the amount of tax collected or levied.~~

(B) Every consumer shall retain for a period of six (6) years all of the receipts for all sales for which the consumer claimed an exemption and any exemption forms or certificates as may be necessary to determine the validity of claimed exemptions.

(C) All such records and documentation required to be retained shall be made available for examination at reasonable times by the City or agents of the City, for the purpose of ascertaining the correctness of a return or for the purpose of determining the amount of tax collected or levied.

6.40.130 PERSONAL LIABILITY OF CORPORATE OFFICER FOR UNPAID TAXES. ~~RESERVED~~

(A) Any person who receives or collects a tax or any money represented to be a tax from another person holds the amount so collected in trust for the benefit of the city and is liable to the city for the full amount collected plus any accrued penalties and interest on the amount collected.

(B) Persons owning stock of ten percent (10%) or more of the total of corporations or ten percent (10%) interest in limited liability companies with thirty-five (35) or fewer owners and exercising responsibility for fiscal management, shall be jointly and severally liable for sales taxes levied or otherwise required to be collected or paid to city by such corporations or limited liability

company when such taxes become due and unpaid to the extent that such taxes accrued while such person was exercising responsibility for fiscal management.

(C) The dissolution of a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership does not discharge an officer, member-manager, manager, or partner's liability for a prior failure of the corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership to file a return or remit the tax due. The sum due for such a liability may be assessed and collected as provided by law.

(D) If the corporate officers, limited liability company member-managers or managers, or partners elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership shall provide the city with a surety bond or certificate of deposit as security for payment of any tax that may become due. The bond or certificate of deposit provided for in this section shall be in an amount equal to the estimated annual gross sales multiplied by the applicable sales tax rate.

(E) Upon the termination, dissolution, or abandonment of the business of a corporation, partnership, limited partnership, limited liability partnership, or limited liability company, any officer, member, manager, partner, or other person having control or supervision of, or who is charged with the responsibility for the filing of returns or the payment of tax, or who is under a duty to act for the corporation, partnership, limited partnership, limited liability partnership, or limited liability company in complying with any requirement of this Chapter, and who is not jointly and severably liable under Section 6.40.130(A), shall be personally liable for any unpaid taxes and interest and penalties on those taxes, if the officer, member, manager, partner, or other person willfully fails to

pay or to cause to be paid any taxes due from the corporation, partnership, limited partnership, limited liability partnership, or limited liability company pursuant to this part.

(F) The officer, member, manager, partner, or other person liable under 6.40.130(E) shall be liable only for taxes that became due during the period he or she had the control, supervision, responsibility, or duty to act for the corporation, partnership, limited partnership, limited liability partnership, or limited liability company, plus interest and penalties on those taxes.

(G) Personal liability may be imposed pursuant to this section, only if the city can establish that the corporation, partnership, limited partnership, limited liability partnership, or limited liability company had included tax reimbursement in the selling price of, or added tax reimbursement to the selling price of, tangible personal property sold in the conduct of its business, or when it can be established that the corporation, partnership, limited partnership, limited liability partnership, or limited liability company made a purchase subject to tax and failed to pay the tax.

(H) For purposes of this section "willfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action.

**6.40.135. WITHHOLDING OF PERSONAL PROPERTY OF TAXPAYER OR EMPLOYER
FAILING TO WITHHOLD; NOTICE; DESIGNATION OF ADDRESS OF DEPOSITORY
INSTITUTION; LIQUIDATION OF FINANCIAL ASSETS; LIABILITY FOR FAILURE TO WITHHOLD**

(A) The City Manager may by notice, served personally or by first-class mail, require any employer, person, officer or department of the state, political subdivision or agency of the state, having in their possession, or under their control, any credits or other personal property or other

things of value, belonging to a taxpayer or to an officer of a person liable for unpaid tax under section 6.40.130 of this Chapter or person who has failed to withhold and transmit amounts due pursuant to this section, to withhold, from the credits or other personal property or other things of value, the amount of any tax, interest, or penalties due from the taxpayer or the amount of any liability incurred by that person for failure to withhold and transmit amounts due from a taxpayer and to transmit the amount withheld to the city at the times that the City Manager may designate. However, in the case of a depository institution, as defined in Section 19(b) of the Federal Reserve Act (12 U.S.C.A. Sec. 461(b)(1)(A)), amounts due from a taxpayer under this section shall be transmitted to the city not less than 10 business days from receipt of the notice. To be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to any branch or office where the City Manager reasonably believes credits or other property is held.

(B) When the city, pursuant to this section issues a levy upon, or requires by notice, any person, or financial institution, as applicable, to withhold all, or a portion of, a financial asset for the purpose of collecting a delinquent tax liability, the person, or financial institution, that maintains, administers, or manages that asset on behalf of the taxpayer, or has the legal authority to accept instructions from the taxpayer as to the disposition of that asset, shall liquidate the financial asset in a commercially reasonable manner within 90 days of the issuance of the order to withhold. Within five days of liquidation, the person, or financial institution, as applicable, shall remit to the city the proceeds of the liquidation, less any reasonable commissions or fees, or both, which are charged in the normal course of business.

(C) If the value of the financial assets to be liquidated exceeds the tax liability, the taxpayer may, within 60 days after the service of the order to withhold upon the person, or financial institution, instruct the person, or financial institution, as to which financial assets are to be sold to

satisfy the tax liability. If the taxpayer does not provide instructions for liquidation, the person, financial institution, or securities intermediary shall liquidate the financial assets in a commercially reasonable manner and in an amount sufficient to cover the tax liability, and any reasonable commissions or fees, or both, which are charged in the normal course of business, beginning with the financial assets purchased most recently.

(D) Any corporation or person failing to withhold the amounts due from any taxpayer and transmit them to the city after service of the notice shall be liable for those amounts. However, in the case of a depository institution, if a notice to withhold is mailed to the branch where the account is located or principal banking office, the depository institution shall be liable for a failure to withhold only to the extent that the accounts can be identified in information normally maintained at that location in the ordinary course of business.

6.40.140 TAX RULINGS

(A) The City Manager or designee shall adopt and amend procedures and forms for the administration of this chapter, and shall adopt guidelines for the determination of the taxability of transactions.

(AB) The City Manager or their designee may rule upon specific transactions at the request by a seller or purchaser. The written ruling on a specific sale may be relied upon by the parties to that sale unless essential facts were not provided to the person making the ruling or the ruling is clearly contrary to the provisions of this Code.

(BC) The City Manager or their designee shall take all steps necessary and appropriate to administer this Chapter which includes the authority to enter into payment plans for delinquent sales taxes, penalties and interest.