

**CITY OF CORDOVA, ALASKA
SUBSTITUTE ORDINANCE 1174**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CORDOVA, ALASKA,
ENACTING CORDOVA MUNICIPAL CODE CHAPTER 5.41 RAW FISH TAX, THE
IMPLEMENTATION OF A VOTER APPROVED 0.5% TAX ON THE VALUE OF RAW FISH
~~LANDED~~SOLD IN THE CITY OF CORDOVA**

WHEREAS, Cordova City Council finds that City harbor facilities are in urgent need of improvement, repair and maintenance, and that an additional source of revenue is needed for this purpose; and

WHEREAS, the commercial fishing industry benefits from its use of City harbor facilities and should bear part of the cost of improving, repairing and maintaining City harbor facilities through the payment of a tax on the value of raw fish landed in the City; and

WHEREAS, the voters approved a 0.5% tax on the value of raw fish sold in the City at the March 5, 2019 Regular City election; and

WHEREAS, the implementation of a raw fish sales tax of 0.5% percent is in the City’s best interest as it provides the City additional revenues to meet the needs of its commercial fishing industry, population and visitors.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Cordova, Alaska that:

Section 1. Cordova Municipal Code Chapter 5.41, entitled “Raw Fish Tax,” is hereby enacted to read as follows:

Chapter 5.41 Raw Fish Tax

Sections:

- 5.41.010 Definitions
- 5.41.020 Levy of Tax
- 5.41.030 Dedicated Use of Tax Proceeds
- 5.41.040 Exemptions
- 5.41.050 Exemption Cards
- 5.41.060 Obligation to Pay Tax
- 5.41.070 Registration
- 5.41.080 Collection of Tax
- 5.41.090 Remittance of Tax
- 5.41.100 Raw Fish Tax Return
- 5.41.110 Delinquency, Penalties, and Interest
- 5.41.120 Enforcement
- 5.41.130 Refund Procedure
- 5.41.140 Regulations, Procedures, and Forms
- 5.41.150 Record Keeping and Audits
- 5.41.160 Confidentiality of Fish Tax Returns
- 5.41.170 Tax Rulings

[Language added to Ordinance 1174 as introduced is bolded and highlighted. Language stricken from Ordinance 1174 as introduced is stricken through.]

5.41.010 - Definitions.

For purposes of this Chapter, the following terms shall be defined as follows:

- A. “Buyer” means any individual or entity, whether acting as principal, agent or broker, purchasing raw fish from a Seller and required and responsible to collect and remit raw fish sales tax under this Chapter. **A direct to market seller qualifies as a “Buyer” when falling within this definition.**
- B. “Indirect consideration” means anything of value furnished directly or indirectly to a Seller by a Buyer. Indirect consideration includes, but is not limited to, any discounts or payments made for fuel, supplies, ice, gear, handling fees, tender fees, or volume bonuses, whether paid at the time of purchase or later.
- C. “Processed” means raw fish has been cooked, canned, smoked, butchered, frozen, salted, dehydrated, or other actions have occurred to modify the condition of raw fish in preparation of the raw fish for sale. Processed does not mean decapitating, gutting, gilling, sliming, or icing of raw fish by the person harvesting the fish if done for the purpose of maintaining the quality of the raw fish until it can be sold.
- D. “Raw fish” means fin fish and shellfish and includes, but is not limited to: crabs, shrimp, scallops, clams, oysters, salmon, halibut, cod, trout, rockfish that have not been processed.
- E. “Sale price” means total consideration in money, credit, rights or other property paid or given to Seller by a Buyer in exchange for raw fish transferred, sold or otherwise conveyed within the boundaries of the City. “Total consideration” as used in this Chapter includes but is not limited to cash value and any indirect consideration.
- F. “Seller” means a person or entity that has caught raw fish and sells it to a Buyer.

5.41.020 - Levy of Tax.

There is levied a raw fish sales tax of 0.5% on the sale price of raw fish transferred, sold or otherwise conveyed within the boundaries of the City. Raw fish delivered outside the boundaries of the City shall be taxable if the sales are contracted for or agreed to be made within the City.

5.41.030 - Dedicated Use of Tax Proceeds.

The net proceeds from the taxes levied by this Chapter shall be used for the cost of improving, repairing and maintaining City harbor facilities.

5.41.040 - Exemptions.

The following sales of raw fish are exempt transactions and are not subject to taxation by the City under this Chapter:

- A. The sale of raw fish for the sole purpose and use as bait.
- B. The sale of raw fish by a hatchery permitted under AS 16.10.**

5.41.050 - Exemption Cards.

- A. Any person or entity claiming exemption from raw fish sales tax collection or remittance under this Chapter shall apply to the City for an exemption authorization card within one month of any purchase or sale of raw fish. Any Seller may refuse to accept the exemption card if he or she believes that the sale of raw fish is not tax exempt.

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- B. An exemption card may be revoked, and a revocation appealed in the same manner as provided in Section 5.40.032 of the Code. The burden of establishing an exemption shall be on the person claiming an exemption.

5.41.050 - Obligation to Pay Tax.

- A. The obligation to pay the tax to the City is upon Seller; however, Buyer shall retain the raw fish sales tax at the time of the sale and shall remit the amount retained to the City as provided in this Chapter. Collection by Buyer shall not limit the liability of Seller to the City to pay the tax.
- B. All raw fish sales taxes collected by Buyer are City monies and must be held in trust for the City. Buyer is accountable to the City for all taxes collected until the taxes have been transferred to the City in full.

5.41.070 – Registration.

- A. All Buyers of raw fish shall file an application for a certificate of registration to be submitted to the Finance Director on a form approved by the Finance Director and available online or at City Hall. All applications must be complete and accompanied by the registration fee required under this Section.
- B. The application shall include, but may not be limited to, the following information:
 - 1. The name of the applicant.
 - 2. The name under which the applicant intends to buy raw fish within the boundaries of the City.
 - 3. The applicant's mailing address, telephone number and email address.
 - 4. The street address and legal description of each location in the City where the applicant will engage in business.
 - 5. If the applicant is not a natural person, the applicant's type of organization, and the jurisdiction under whose laws the applicant was organized.
 - 6. Proof that the Buyer maintains a business license as required by the Code and a fisheries business license with the State of Alaska.
- C. The application fee for a certificate of registration under this section is \$35.00.

5.41.080 - Collection of Tax.

- A. Buyer shall add the 0.5% raw fish sales tax to the sale price of raw fish and collect the tax at the time raw fish is purchased from Seller. Notwithstanding the liability of Seller, taxes collected or taxes that should have been collected by Buyer under this Chapter are monies of the City for which Buyer is at all times liable to the City.
- B. On any invoice, bill or other record of payment, the tax must be shown 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.

5.41.090 – Remittance of Tax to the City.

- A. Taxes collected by Buyer shall be remitted to the City **March 31 of the year following the year of activity subject to tax under this chapter.**~~by the 15th of the month following the calendar month in which the taxes were or should have been collected, together with the form required by the City.~~
- B. A Buyer who sells his or her business, business inventory, or accounts receivable to another, shall file a final raw fish sales tax return within 15 days after the date of sale. The purchaser of

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the business, business inventory, or accounts receivable shall withhold a portion of the purchase money sufficient to pay the tax, penalties, and interest that may be due until 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 the taxes, penalties and interest owed by Seller of the business, business inventory, or accounts receivable 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 receivables at the time the liability was incurred.

- C. If Buyer terminates his or her business without the benefit of a purchaser, successor or assign, Buyer shall make a final return and settlement of tax obligations within fifteen (15) days of the termination of business.

5.41.100 - Raw Fish Tax Return.

At the time the tax is remitted under Section 5.41.090, Buyer must file a completed raw fish sales tax return with the Finance Department. Tax forms are available at City Hall. The Buyer submitting the return must sign the return certifying that the return correctly states the information set forth therein. The tax return shall set forth:

- A. Name and address of Buyer;
- B. The calendar month covered by the return;
- C. The date the return is prepared;
- D. The total sale price of raw fish purchased, sold, or delivered within the City during the calendar month by pounds, average price per pound, and by species;
- E. Taxes due; and,
- F. Such other information as may be required by the City or the City Manager.

5.41.110 - Delinquency, Penalties, and Interest.

In the event that a party fails to remit taxes when due, the City shall be entitled to recover penalties and interest as follows:

- A. Penalties and interest as provided in Section 5.40.130 of the Code.
- B. All payments received shall be applied in the following order of priority:
 - 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.
- C. The tax, penalty and interest, as imposed by this chapter, together with all administrative and legal costs incurred, shall constitute a lien in favor of the city upon all the delinquent taxpayer's real and personal property. The lien arises upon delinquency and continues until the liability for the amount is satisfied, or the property is sold at a foreclosure sale. The lien has priority as allowed by AS 29.45.650(e).

5.41.120 - Enforcement.

- A. If tax is not paid when due, the City may enforce the payment of the tax, interest and any penalties by any method permitted by law, including but not limited to the lien and sale of property of the delinquent taxpayer, and a personal action against the delinquent taxpayer.
- B. The City may bring an action for civil penalties for the violation of any provision of this Chapter. The City may seek injunctive relief from any violation or threatened violation of this Chapter.

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- C. An action for injunctive relief may be brought notwithstanding the availability of any other remedy. Upon an application for injunctive relief and a finding of violation or threatened violation of a provision of this Chapter, the Superior Court shall grant the injunction. Each day that a violation continues is a separate violation.
- D. For the violation of any provision of this Chapter, the City may bring a criminal action without regard to whether any civil remedy is available or has been sought or obtained.

5.41.130 - Refund Procedure.

- A. A claim for refund of payment of raw fish tax which is made more than six months from the date on which the tax was paid or became due and payable is forever barred.
- B. A claim for refund of payment shall be made by filing with the City Manager or his or her designee a statement of claim, specifying the date the tax was imposed, the amount of protest or refund claimed and the basis upon which the claim for refund is made. The City Manager or his or her designee shall respond in writing within 30 days. If the City Manager or his or her designee does not respond within 30 days, the claim of refund or protest shall be deemed to be approved. The decision of the City Manager or his or her designee shall be the final decision of the City.
- C. Any appeal of the City's decision must be filed in the Superior Court for the State of Alaska in Cordova within 30 days of the final decision of the City Manager or his or her designee in accordance with the Alaska Rules of Appellate Procedure. Failure to file an appeal within the time period waives any claims to a raw fish sales tax refund.

5.41.140 –Regulations, Procedures, and Forms.

The City Manager may promulgate regulations, procedures, and adopt forms to implement, interpret, and apply the provisions of this Chapter.

5.41.150 - Record Keeping and Audits.

- A. It shall be the duty of every Buyer to keep and preserve suitable records of all sales of raw fish made, and such other books or accounts as may be necessary to determine the amount of tax for collection of which Buyer is liable under this Chapter, including records of daily sales, together with invoices of purchases and sales, bills of lading, bills of sale or other pertinent records and documents as will substantiate and prove the accuracy of a raw fish sales tax return. It shall be the duty of every Buyer to keep and preserve for a period of three years from the date of filing any return, all such books, invoices and other records as may be necessary, all of which shall be subject to examination by the City Manager or any authorized employee or agent thereof who is engaged in checking or auditing the records of any seller required to make a return under the provisions of this chapter.
- B. For the purpose of ascertaining the correctness of a return, or for the purpose of determining the amount of tax collected or which should have been collected, the City Manager, or his or her duly authorized agent, may hold investigations and hearings concerning any matters covered by this chapter, and may examine any relevant books, papers, records or memoranda of any Buyer, and may require the attendance of any Buyer, or officer or employee of Buyer. The City Council shall have the power to issue subpoenas to compel attendance or to require production of relevant books, papers, records or memoranda.

5.41.160 - Confidentiality of Fish Tax Returns.

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Raw fish tax returns filed with the City for the purpose of complying with the terms of this Chapter and all data obtained from such returns shall be confidential and may only be disclosed to the taxpayer, the State of Alaska or the United States for tax enforcement purposes or in response to a court order. The City may publish or compile general data based on the information in the tax returns so long as the published or compiled information does not directly or indirectly identify any Buyer or Seller.

5.41.170- Tax Rulings.

- A. The City Manager or his or her designee may rule upon specific transactions upon request by a Seller or Buyer. 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 Chapter.
- B. The City Manager or his or her designee shall take all steps necessary and appropriate to administer this Chapter which includes the authority to enter into payment plans for delinquent taxes, penalties and interest.

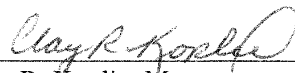
Section 2. This ordinance shall be effective thirty (30) days after its passage and publication. This ordinance shall be enacted in accordance with Section 2.13 of the Charter of the City of Cordova, Alaska, within ten (10) days after its passage.

1st reading: April 3, 2019

2nd reading and public hearing: April 17, 2019


PASSED AND APPROVED THIS 19th DAY OF APRIL 2019.





Clay R. Koplin, Mayor

ATTEST:



Susan Bourgeois, CMC, City Clerk

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