

Initiated by: Finance Committee
Date: August 24, 1993
Public Hearing: September 14, 1993
Action: Passed
Vote: 5-yes; 1-no

ORDINANCE #93-23

AN ORDINANCE OF THE CITY OF BETHEL, ALASKA, AMENDING TITLE 4 OF THE BETHEL MUNICIPAL CODE, IMPOSING A FIVE PERCENT (5%) USE TAX ON ALCOHOLIC BEVERAGES, AND PROVIDING FOR MEANS OF COLLECTION AND ENFORCEMENT.

BE IT ENACTED BY THE CITY COUNCIL OF BETHEL, ALASKA, AS FOLLOWS:

Section 1: Title 4 of the Bethel Municipal Code is amended by adding a new chapter, 4.17, entitled Alcoholic Beverages Use Tax, as follows:

4.17.010 Imposition and Rate. There is imposed a tax of five percent (5%) of the selling price on the storage, use, or consumption of alcoholic beverages in the City. This use tax is levied upon the Buyer and shall be collected and remitted as provided in this chapter.

4.17.020 Definitions. For purposes of this chapter, certain words and phrases are defined as follows:

(a) "Alcoholic Beverage" means spirituous vinous, malt or other fermented or distilled liquids whatever the origin that are intended for human consumption as a beverage and that contain alcohol whether produced commercially or privately.

(b) "Buyer" means anyone who acquires the ownership of alcoholic beverages for a valuable consideration.

(c) "City" means the City of Bethel, Alaska.

(d) "Common Carrier doing business within the "City" or "Common Carrier" means any person transporting alcoholic beverages by air or water to or from the City on behalf of any Buyer or Seller.

(e) "Person" means an individual, partnership, cooperative, association, joint venture, corporation, estate, trust, business, receiver, or any entity, group or combination acting as a unit.

(f) "Seller subject to this chapter" or "Seller" means any person who:

- (1) sells alcoholic beverages; and
- (2) has or maintains within the State of Alaska, directly or by a subsidiary, any place of business, or has any agent or other representative operating within the State of Alaska under the authority of the seller or its subsidiary; and
- (3) mails or otherwise causes to be delivered by any means whatsoever any amount of alcoholic beverages to any location within the City, provided that the alcoholic beverages are mailed or otherwise caused to be delivered from a location within the State of Alaska.

(g) "Selling price" means the present fair market value of all detriment incurred by the Buyer in the acquisition of alcoholic beverages including cash payments, debt obligations and the present value of goods, realty or services.

(h) "Storage, use, or consumption" means the exercise by any person of any right or power over alcoholic beverages incident to the ownership of that property.

4.17.030 Payment and Collection.

(a) The use tax shall be paid by the Buyer subject to the provisions of this chapter. A Buyer purchasing alcoholic beverages from a Seller subject to this chapter shall pay the use tax to the Seller at the time of payment.

(b) A Seller subject to this chapter shall collect this use tax at the time of payment and remit the same to the City as provided in 4.17.070-.180.

(c) Failure of Buyer to pay to the Seller or a common carrier or failure of the Seller or a common carrier to collect from the Buyer does not relieve Buyer of the obligation to pay the use tax.

(d) A Common Carrier doing business within the City shall collect any use tax not previously collected from the Buyer before any alcoholic beverage is released to Buyer by any Common Carrier from any community delivery site.

(e) Buyers who have not already paid the use tax to a Seller or Common Carrier shall pay the use tax to the City revenue collector at the time the alcoholic beverages are imported for use, storage or consumption in the City. Any use taxes not paid by Buyer to City by the thirtieth day of the month following the month in which the alcoholic beverage was imported for use, storage and

consumption within the City shall be delinquent as of that date.

4.17.040 Community Delivery Sites.

(a) All alcoholic beverages mailed, delivered, or otherwise transported other than by the Buyer personally as luggage or freight on a Common Carrier which is simultaneously transporting Buyer into the City shall be delivered to a community delivery site. The Bethel community delivery sites shall be: (1) Any water-borne vessel operated by any common carrier doing business in the City any time such vessel is off-loading freight containing alcoholic beverages within the Port of Bethel; (2) Any freight office, cargo office or ticket office operated by any common carrier doing business in the city.

(b) All packages containing alcoholic beverages must be packaged in a shipping container that bears a non-removable label identifying the Seller, show the written order number required by 15 AAC 104.645 (m), if applicable, and must be labeled with the words "Alcoholic Beverages" in letters at least two inches high and drawn in lines one-quarter inch wide. In addition, an invoice, enclosed in a non-removable, sealed envelope must be securely attached to the package. Invoices must be legibly hand-written or typed, prepared by the Seller, and show the description, quantity, unit price, extended price total value, and use tax charged for all alcoholic beverages in the container. This invoice may be retained by the City.

(c) All Buyers personally transporting more than two liters of wine or malt beverages, or more than one liter proof of payment of the use tax before any alcoholic beverages are released to the Buyer. The Buyer must sign for the alcoholic beverages on a form to be promulgated by the City stating that the alcoholic beverages are not for resale.

4.17.050 Credit. A person who furnishes proof in the form required by the City, as promulgated by regulation, that the person has paid a sales tax on alcoholic beverages subject to this use tax shall be required to pay the use tax only to the extent of the difference between the amount of the sales tax paid and the amount of this use tax. This credit applies to a sales tax levied in any taxing jurisdiction, whether inside or outside the state.

4.17.060 Books, records and accounts. Sellers and common carriers subject to this chapter shall compile and retain for at least three years following the end of each tax year accurate and complete books, records and accounts of all sales transactions or freight transactions of alcoholic beverages, reflecting the name of the Buyer in each instance.

4.17.070 Monthly returns and payments.

(a) A Seller or Common Carrier subject to this chapter shall complete a City alcohol use tax return reporting accurately and completely, in the manner established by the form, all alcoholic beverage sales or freight transactions during the preceding calendar month subject to either the obligation to pay or the obligation to collect this use tax. Each return shall set forth the selling price of all alcoholic beverages subject to this use tax; the amount of tax thereon and such other information as the City may require.

(b) Any Seller or common carrier subject to this chapter who filed or should have filed an alcohol use tax return for the prior month shall file a return even though no tax may be due. This return shall show why no tax is allegedly due. If the business has been sold, the person to whom it was sold, the date it was sold and the address and telephone number of the person to whom it was sold shall be shown.

(c) Each alcohol use tax return for a calendar month shall be received at the office of the City revenue collector or postmarked with sufficient postage on or before the thirtieth day of the month succeeding the end of that calendar month for which the return is submitted. Taxes not paid on or before this date are delinquent as of this date. In the event that the due date is a Saturday, Sunday or state legal holiday, the alcohol use tax return shall be received or postmarked with sufficient postage on or before the next following business day. All taxes and interest due shall be remitted with the return.

4.17.080 Termination, sale or transfer of retail business.

(a) A Seller subject to this chapter who sells, transfers or assigns a substantial portion of its interest in a business selling alcoholic beverages to another person shall make a final alcohol use tax return within thirty (30) days after the date of such conveyance.

(b) A Seller subject to this chapter who terminates its business without the benefit of a purchaser, successor or assign, shall make a final alcohol use tax return within thirty (30) days after such termination.

(c) Any Seller subject to this chapter who has filed an alcohol use tax return shall be presumed to be making sales of alcoholic beverages subject to this use tax in succeeding months unless he or she files a subsequent return declaring the termination or sale of its business as it pertains to alcoholic beverages.

4.17.090 Liability for use tax.

(a) Any Buyer, Seller or Common Carrier who fails to either pay or collect alcohol use tax as required by this chapter is jointly and severally liable to the City for the full amount of the unpaid tax plus penalties and interest established by this chapter.

(b) Upon termination, dissolution, or abandonment of a corporate business, any officer or other person having control or supervision of alcohol use tax funds collected and held in trust or who is charged with the responsibility for filing alcohol use tax returns or the payment of alcohol use tax funds collected and held in trust, shall be personally liable for any unpaid taxes, interest and penalties on those taxes.

(c) This section does not relieve the corporation of its tax liabilities or otherwise impair other tax collection remedies afforded by law.

4.17.100 Interest for delinquency. Interest shall accrue on the principal amount of delinquent taxes at the rate of fifteen percent (15%) per annum from the date of the delinquency until paid. Interest shall be assessed and collected in the same manner as this alcohol use tax is assessed and collected.

4.17.110 Estimated tax.

(a) On or after the fifth day of delinquency in the filing of the required alcohol use tax return, the City shall assess against a delinquent Seller, Buyer or Common Carrier a use tax for the delinquent period based on a reasonable estimate of use tax due, computed from prior tax payments submitted by the delinquent Seller, Buyer or Common Carrier. If the City determines that insufficient prior tax payments are available to compute a reasonable estimate of the tax owed, it may calculate the estimate from other sources of information, including but not limited to information derived from comparable businesses. Notice of the estimated assessment shall be provided to the Seller, Buyer or Common carrier by certified mail. Such assessment shall be due and owing retroactive to the first day of delinquency and shall be subject to the same interest provided in Section 4.17.100.

(b) The estimated assessment of alcohol use tax due and owing, as provided in subsection (a) of this section, shall be good and sufficient evidence of the amount due and owing to City unless the City revenue collector receives, within ten days of the date of the mailing of notice of the estimated assessment, an accurate and complete alcohol use tax return for the delinquent period, together with a full payment of all taxes and interest due, plus an additional payment of one hundred dollars (\$100) to defray the

expense to the City of estimating the delinquent taxes and providing notice thereof.

4.17.120 Tax evasion.

(a) Any person who fails to file a return or remit use tax as required by this chapter, who makes a false statement of the amount of alcohol use tax due, or who makes a false statement on any form required under this chapter, is guilty of a misdemeanor punishable upon conviction by a fine or not more than three hundred dollars (\$300) together with the costs of prosecution.

(b) Any person who willfully or intentionally fails, neglects or refuses to comply with any provision of this chapter; or remits or rebates to a Buyer whether directly or indirectly and by whatsoever means, all or any part of the tax levied hereunder; or makes in any form of advertising, verbally or otherwise, any statement which implies that the person is absorbing the tax, paying the tax for the Buyer by an adjustment of prices or in any manner whatever, is guilty of a misdemeanor; provided, however, a Seller may advertise that the purchase price includes the alcohol use tax.

(c) The City may institute a civil action against any person who violates this chapter. In addition to injunctive and compensatory relief, a civil penalty not to exceed one thousand dollars (\$1,000) may be imposed for each violation. Any action to enjoin a violation may be brought notwithstanding the availability of any other remedy. On application for injunctive relief and a finding of a violation or a threatened violation, the Superior Court shall grant the injunction. Each day that a violation of this chapter continues constitutes a separate violation.

4.17.130 Audits.

(a) The City is not bound to accept any alcohol use tax return as correct. It may make an independent investigation of all taxable alcoholic beverage uses and corresponding sales transactions. In such cases, the City may make its own valuation of the transaction, which shall be good and sufficient evidence before the City Council and in a court of law to justify the assessment of alcohol use tax due unless clearly and convincingly refuted by other evidence introduced by the person challenging the assessment.

(b) For the conduct of an investigation, the City may enter the premises of the Buyer, Seller or Common Carrier during reasonable hours, and may examine all books, records, accounts and other documents and property, that may reasonably lead to the discovery of evidence of alcoholic beverage transactions. A person

shall, upon request, furnish to the City every facility and assistance for the purpose of the investigation.

4.17.140 Enforcement remedies. If any alcohol use tax is not paid when due, the City may enforce the payment of the tax and interest by any method available at law or equity, including but not limited to the lien and sale of personal property, a personal action, an action for civil penalties, an action for injunctive relief, and prosecution as a criminal misdemeanor.

4.17.150 Liens.

(a) The tax, interest, and other costs due and owing under this chapter shall constitute a lien in favor of the City upon the assets or property of all persons liable for the payment of the tax, interest, and other costs.

(b) The lien imposed by this section arises and attaches at such time that payment becomes delinquent and continues until the entire amount due has been paid.

(c) If delinquent alcohol use taxes, including interest, are not paid within ten days from the mailing of notice and demand for payment thereof, a notice of lien may be recorded in the appropriate office of the district recorder. Upon recordation a lien arising under this section has priority over any other liens except those for special assessments or those granted priority by state or federal law.

(d) An action to foreclose the lien created by this section shall be commenced and pursued in the manner provided for the foreclosure of liens in AS 09.45.170 - 09.45.220.

(e) The remedy provided in this section is not exclusive and shall be in addition to all other remedies available to the City to collect the alcohol use taxes and interest due under this chapter.

(f) The failure to record a lien shall not be construed as a waiver or abrogation of any and all priorities, rights and interests of the City at law or in equity.

(g) Fees for the administrative costs of filing notices of liens and releasing of liens shall be:

- (1) filing of notices of lien: twenty-five dollars (\$25), plus recorder's office filing fee;
- (2) release of liens: twenty-five dollars (\$25), plus recorder's office filing fee;

(h) Upon full satisfaction and payment of all taxes, interest and costs due and owing to the City, the City shall file a certificate discharging the lien.

4.17.160 Appeal. An aggrieved Buyer or Seller may appeal a decision of the City revenue collector or City Manager by filing a written appeal with the City Council setting forth with particularity the specific facts and all supporting evidence upon which such appeal is based, not later than thirty days after notice of the decision from which the appeal is taken. The decision of the City Council shall be final.

4.17.170 Refund of use tax -- Interest.

(a) If through error or otherwise, a Buyer pays to the City alcohol use taxes to which the City is not entitled by law, the Buyer may, within one year from the date of the tax, apply to the City revenue collector or City Manager for a refund.

(b) If the application for refund of tax, does not exceed in the aggregate one thousand five hundred dollars (\$1,500), the City revenue collector or City Manager may, upon audit of the Buyer's account, refund the tax, and interest where applicable, to the Buyer.

(c) In all other cases, claims for refund shall be presented by the City revenue collector or City Manager to the City Council at a regular meeting thereof. The City Council shall review the application, and, if in its opinion the taxpayer is entitled to a refund, the council shall, by motion duly adopted, authorize the City revenue collector or City Manager to make the requested refund. Otherwise, the council shall, by motion duly adopted, deny the application for refund. The council may refund any interest due at the rate of fifteen percent (15%) per annum; provided, however, the council shall pay interest only if the overpayment is determined to have been caused by an error by the City.

(d) The procedure set forth in this section is the only procedure whereby a refund may be made, and having first duly complied herewith is a condition precedent to bringing a suit to recover said taxes. Any person who has not timely availed himself of the remedy provided herein shall be deemed to have waived any right to such refund as well as the right to recover said tax, or interest.

(e) Any claim for refund shall be filed with the City revenue collector or City Manager within one year from the date of payment of the tax. The failure to file a claim for the refund within the time allowed shall forever bar the claim.

4.17.180 Regulations. The City Manager or his designee may enact regulations to implement this chapter.

Section 2: Severability. If any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in the controversy in which such judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or its application to other persons or circumstances. The City hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.

Section 3: Effective date. This ordinance takes effect on the first day of the first month following its approval by the voters of the City of Bethel at the October 5, 1993, municipal election.

PASSED AND APPROVED THIS 14th DAY OF September, 1993.

James H. Feaster III
James H. Feaster III, Mayor

ATTEST:

Jane Elam
Jane Elam, City Clerk