




## MEMORANDUM

**To:** Mayor McConnell and Members of the Assembly

**From:** Mark Gorman, Municipal Administrator 

**Subject:** **Gary Paxton Industrial Park Water Fee Ordinance**

**Date:** June 18, 2014

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City staff and the Gary Paxton Industrial Park (GPIP) Board have communicated for several months on a revised ordinance to address Raw Water Fees generated from water sales at the Park. This included discussions with the Investment Committee. The ordinance before you is Administration's attempt to incorporate the GPIP Board's key language elements. Although, it departs from the specific language that the GPIP has requested, CBS feels it addresses the intent and provides the Assembly with appropriate authority and flexibility over future water revenues and allocations.

In your packet is a June 2 memo from Garry White, SEDA Executive Director, which addresses the discussions between CBS staff and the GPIP Board regarding language for this ordinance. I would direct your attention to page two of the memo in which under the heading "**GPIP Board Recommendations**", Mr. White succinctly provides the preferred language of the GPIP Board.

Monday, June 02, 2014

**MEMORANDUM**

To: Mark Gorman, CBS Administrator  
From: Garry White, Director  
Subject: Bulk Water Fee Discussion (SGC 4.06)

**Introduction**

Sitka General Code (SGC) 4.06 defines the allocation of revenues from the sale of water (Please see the attached current SGC 4.06). SGC 4.06 was established in July 2000, soon after the CBS had obtained permits to export water in bulk. While SGC 4.06 defines the sale of water, it does not address the allocation of “non-refundable payments” earned through bulk water contracts.

The Gary Paxton Industrial Park (GPIP) Board of Directors met in October and December 2013 and in May 2014 to discuss how “non-refundable payments” the CBS has been receiving from bulk water contracts fits within the current SGC 4.06.

**Background**

The CBS has entered into multiple agreements with various companies since 2000 to export raw water in bulk. In 2006 the CBS entered into a 20 year agreement with True Alaska Bottling Company (TAB) to export Sitka’s water. The agreement with TAB requires a certain amount of water to be exported by set benchmark dates or the CBS can terminate the contract. TAB failed to meet the first benchmark date of December 8<sup>th</sup>, 2008. The CBS amended the agreement to allow TAB additional time to export water. A requirement of the first amendment was for TAB to pay the CBS a \$100,000 non-refundable payment to the CBS for a one year extension of their benchmark date to export water. In 2009, 2010, & 2012, three more contract amendments were granted by the CBS with \$100,000, \$150,000, and \$1,000,000 collected respectively by the CBS in non-refundable payments to allow TAB extension of the benchmark export dates.

The contract amendments allow for the non-refundable payments to be used as water credits in the event water is exported. If no water is exported, the payment becomes property of the CBS. To date no water has been exported by TAB. The current agreement with TAB (agreement assigned to Alaska Bulk Water Inc. in March 2014) sets a benchmark date of December 8<sup>th</sup>, 2015 to export water

The first three bulk water fee payments of \$100k, \$100k, and \$150k were allocated to the GPIP enterprise fund. However, when the most recent bulk water contract fee of \$1,000,000 was received, the allocation of the funds was in question.

The GPIIP Director offered the following comments concerning the non-refundable fees.

### **GPIIP Director's Comments**

- Infrastructure to move water from the shore to a ship or other transportation methods has not been designed, permitted, funded, or constructed. Sitka's bulk water venture will not move forward until this has been completed.
- TAB has asked for CBS support in designing, permitting, and construction of a water based bulk water distribution system.
- The SEDA management contract to promote, market, and manage Sitka's bulk water venture is paid for out of the GPIIP enterprise fund.
- Blue Lake is a community asset that is being leveraged to receive the non-refundable payments.
- GPIIP relies on other CBS departments (electric, water, public works, etc.) to move the bulk water venture forward.
- SGC 4.06 needs to have clarification added concerning the "non-refundable payments" as it is not clearly defined in current SGC.
- SGC 4.06.025 should be deleted from code as it no longer applies.

### **GPIIP Board Final Recommendations**

GPIIP Board's recommendations from the December 5<sup>th</sup> GPIIP Board meeting and reaffirmed at its May 14<sup>th</sup> meeting are the following:

1. A separate CBS account should be established for non-refundable payments associated with bulk water contracts. This new account shall be named the GPIIP Bulk Water Fee Fund.
2. Account funds will be transferred to appropriate enterprise/general funds to offset expenses for department services related to the CBS bulk water venture. Any department requesting to draw funds from the GPIIP Bulk Water Fee Fund shall include this as a line item in their annual budget and submit a draft of the budget to the GPIIP Board for their review and to allow the GPIIP Board to make their recommendations to the Assembly.
3. Capital projects requesting funds from the account will require recommendation from the GPIIP Board and approval from the CBS Assembly.
4. Section 4.06.025 is deleted from the SGC 4.06, as it is no longer applicable.

5. The remaining portions of SGC 4.06 will remain as currently written.

**Additional Information**

- The GPIIP Board's recommendations were brought to the CBS Investment for their review.
- The CBS Administration has developed the attached draft ordinance. The proposed ordinance differs in the allocation of revenues from the sale of raw water from the existing SGC 4.06 and SCIP Board recommendations.

**Action**

- Assembly discussion and approval of proposed changes to SGC 4.06.

## **Current Sitka General Code**

### **Chapter 4.06 ALLOCATION OF REVENUES FROM SALE OF WATER**

#### Sections:

- [4.06.010](#) Allocation of revenues from bulk sales of water.
- [4.06.020](#) Allocation of revenues from sales of raw water at Sawmill Cove Industrial Park.
- [4.06.025](#) Allocation of revenues from sales of water at Sawmill Cove Industrial Park subject to the agreement to convey with Alaska Pulp Corporation.
- [4.06.030](#) Allocation of revenues from sales of treated water at Sawmill Cove Industrial Park.

#### **4.06.010 Allocation of revenues from bulk sales of water.**

Twenty-five percent of the revenues received by Sitka from bulk sales of water shall be deposited into the general fund. Half of the remainder of the revenues received by Sitka from bulk sales of water shall be deposited into the electric fund, and the other half of the remainder of the revenues received by Sitka from bulk sales of water shall be deposited into the water fund. This section does not apply to sales of water at Sawmill Cove Industrial Park. (Ord. 00-1582 § 4A (part), 2000.)

#### **4.06.020 Allocation of revenues from sales of raw water at Sawmill Cove Industrial Park.**

For five years starting on the effective date of the ordinance codified in this chapter, fifty percent of the revenues received by Sitka from the sales of raw water at Sawmill Cove Industrial Park shall be deposited into the Sawmill Cove Industrial Park enterprise fund and the remaining fifty percent of such revenues shall be deposited into the water fund. Upon the passage of five years the revenues received by Sitka from the sales of raw water at Sawmill Cove Industrial Park shall be deposited equally into the general fund, the electric fund, the water fund, and the Sawmill Cove Industrial Park enterprise fund. (Ord. 00-1582 § 4A (part), 2000.)

#### **4.06.025 Allocation of revenues from sales of water at Sawmill Cove Industrial Park subject to the agreement to convey with Alaska Pulp Corporation.**

Notwithstanding any other provision of law, fifty percent of the revenues received before April 6, 2009 from sales of raw water subject to Section 9 of the Agreement to Convey between Sitka and Alaska Pulp Corporation shall be paid to Alaska Pulp Corporation. Seventy-five percent of the remainder of the revenues described in the previous sentence shall be deposited in the Sawmill Cove Industrial Park enterprise fund, and twenty-five percent shall be deposited in the general fund. This section shall sunset and be of no further force and effect on April 6, 2009. (Ord. 00-1582 § 4A (part), 2000.)

**4.06.030 Allocation of revenues from sales of treated water at Sawmill Cove Industrial Park.**

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All of the revenues received from the sales of treated water at Sawmill Cove Industrial Park shall be deposited into the water fund. (Ord. 00-1582 § 4A (part), 2000.)

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 2014-24

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA REPEALING SITKA GENERAL CODE CHAPTER 4.06 ENTITLED "ALLOCATION OF REVENUES FROM SALE OF WATER" AND REENACTING IT WITH A NEW CHAPTER 4.06 OF THE SITKA GENERAL CODE ENTITLED "PROCEEDS FROM RAW WATER SALE CONTRACTS"

1. CLASSIFICATION. This ordinance is of a permanent nature and is intended to become a part of the Sitka General Code.

2. SEVERABILITY. If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and application thereof to any person or circumstances shall not be affected thereby.

3. PURPOSE. The purpose of this ordinance is to repeal SGC Chapter 4.06 entitled "Allocation of Revenues from Sale of Water" and replace it in its entirety with SGC Chapter 4.06 entitled "Proceeds from Raw Water Sale Contracts."

4. ENACTMENT. The Assembly of the City and Borough of Sitka hereby repeals the existing SGC Chapter 4.06 in its entirety and reenacts SGC Chapter 4.06 entitled "Proceeds From Raw Water Sale Contracts" as follows:

Title 4 REVENUE AND FINANCE

Chapters:

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4.06 Proceeds from Raw Water Sale Contracts

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Chapter 4.06 PROCEEDS FROM RAW WATER SALE CONTRACTS

Sections:

- 4.06.101 Establishment of raw water sale fund.
4.06.102 Reimbursing expenditures from other funds relating to the sale of raw water, maintenance of raw water distribution infrastructure, or retention of water rights.
4.06.103 Expenditure of net assets of the raw water sale fund.
4.06.104 Allocation of revenues from sales of raw water at Gary Paxton Industrial Park.

47 **4.06.101 Establishment of raw water sale fund.**

48 There shall be established a new fund within the fund system of the City and Borough of  
49 Sitka entitled the Raw Water Sale Fund. The purpose of the Raw Water Sale Fund shall be to  
50 receive all proceeds from bulk water sales contracts, to hold such deposits, and, to reimburse  
51 expenditures made by other funds relating to the sale of bulk water, maintenance of bulk water  
52 distribution infrastructure, or retention of water rights.

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54 **4.06.102 Reimbursing expenditures from other funds relating to the sale of raw water,  
55 maintenance of raw water distribution infrastructure, or retention of water rights.**

56 Any fund of the City and Borough of Sitka which expends funds in order to facilitate the sale of  
57 raw water, negotiate raw water sale contracts, construct or maintain raw water distribution  
58 infrastructure, or pursue legal or regulatory action to maintain water rights may request of the  
59 Assembly that such expenditures be reimbursed out of the assets of the Raw Water Sale Fund.  
60 Upon approval of the request, such reimbursements will be accomplished by the Finance  
61 Department. Such requests may be made whenever appropriate, but shall not be made on a  
62 basis more often than quarterly. The Assembly will consider recommendations from the GPIIP  
63 Board prior to disbursing funds.

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65 **4.06.103 Expenditure of net assets of the raw water sale fund.**

66 At any time, the Assembly of the City and Borough of Sitka may authorize the transfer of the  
67 net assets of the Raw Water Sale Fund to any other fund within the City and Borough of Sitka to  
68 be used for expenditures deemed appropriate by the Assembly. The Assembly will consider  
69 recommendations from the GPIIP Board prior to transferring Raw Water Sale Fund assets. For  
70 purposes of this Section, net assets shall be defined as the assets of the Raw Water Sale Fund,  
71 less any liabilities. Any contractually mandated deposits for exclusive rights to purchase raw  
72 water from the City and Borough of Sitka shall be defined as deposits until such deposits are  
73 either earned through application towards future water sales, or, through the expiration of the  
74 time period to exercise such rights.

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76 **4.06.104 Allocation of revenues from sales of raw water at Gary Paxton Industrial Park.**

77 In the allocation of revenues from the Raw Water Sale Fund, the Assembly will strive to ensure  
78 that the GPIIP has adequate resources to market, manage and administer the assets of the Park  
79 with the goal of maximizing economic returns to the community. Further, The Assembly will  
80 allocate funds as it deems appropriate to other departments of the CBS,

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82 **5. EFFECTIVE DATE.** This ordinance shall become effective the day after the date of  
83 passage.

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85 **PASSED, APPROVED, AND ADOPTED** by the Assembly of the City and Borough of  
86 Sitka, Alaska this 8<sup>th</sup> day of July, 2014.

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89 \_\_\_\_\_  
90 Matt Hunter, Deputy Mayor

91 ATTEST:

92 \_\_\_\_\_  
93 Colleen Ingman, CMC  
Municipal Clerk



# ORDINANCE BEING REVISED

Sponsor: Administrator

## CITY AND BOROUGH OF SITKA

### ORDINANCE NO. 00-1582

#### AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA, ALASKA AMENDING CHAPTER 4.06 OF THE SITKA GENERAL CODE TO ALLOCATE AMONG MUNICIPAL FUNDS THE REVENUES RECEIVED FROM THE SALE OF WATER

1. **CLASSIFICATION.** This ordinance is of a permanent nature and is intended to become a part of the Sitka General Code.

2. **SEVERABILITY.** If any provision of this ordinance or any application thereof to any person is held invalid, the remainder of this ordinance and application thereof to any person or circumstances shall not be affected thereby.

3. **PURPOSE.** This ordinance is intended to allocate among funds of the City and Borough of Sitka the revenues received from large-scale sales of water.

4. **ENACTMENT.** NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka that Title 4 of the Sitka General Code is amended as follows:

A. Title 4 is amended to add a new Chapter 4.06 to read as follows:

#### CHAPTER 4.06

#### ALLOCATION OF REVENUES FROM SALE OF WATER

##### Sections:

- |                 |  |
|-----------------|--|
| <b>4.06.010</b> | <b>Allocation of revenues from bulk sales of water.</b>  |
| <b>4.06.020</b> | <b>Allocation of revenues from sales of raw water at Sawmill Cove Industrial Park.</b>   |
| <b>4.06.025</b> | <b>Allocation of revenues from sales of water at Sawmill Cove Industrial Park subject to the Agreement to Convey with Alaska Pulp Corporation.</b> |
| <b>4.06.030</b> | <b>Allocation of revenues from sales of treated water at Sawmill Cove Industrial Park.</b>   |
| <b>4.06.010</b> | <b>Allocation of revenues from bulk sales of water.</b>  |

Twenty-five percent of the revenues received by Sitka from bulk sales of water shall be deposited into the General Fund. Half of the remainder of the revenues received by Sitka from bulk sales of water shall be deposited into the Electric Fund, and the other half of the remainder of the revenues received by Sitka from bulk sales of water shall be deposited into the Water Fund. This section does not apply to sales of water at Sawmill Cove Industrial Park.

**4.06.020 Allocation of revenues from sales of raw water at Sawmill Cove Industrial Park.**

For five years starting on the effective date of this ordinance, fifty percent of the revenues received by Sitka from the sales of raw water at Sawmill Cove Industrial Park shall be deposited into the Sawmill Cove Industrial Park Enterprise Fund and the remaining fifty percent of such revenues shall be deposited into the Water Fund. Upon the passage of five years the revenues received by Sitka from the sales of raw water at Sawmill Cove Industrial Park shall be deposited equally into the General Fund, the Electric Fund, the Water Fund, and the Sawmill Cove Industrial Park Enterprise Fund.

**4.06.025 Allocation of revenues from sales of water at Sawmill Cove Industrial Park subject to the Agreement to Convey with Alaska Pulp Corporation.**

Notwithstanding any other provision of law, fifty percent of the revenues received before April 6, 2009 from sales of raw water subject to Section 9 of the Agreement to Convey between Sitka and Alaska Pulp Corporation shall be paid to Alaska Pulp Corporation. Seventy-five percent of the remainder of the revenues described in the previous sentence shall be deposited in the Sawmill Cove Industrial Park Enterprise Fund, and twenty-five percent shall be deposited in the General Fund. This section shall sunset and be of no further force and effect on April 6, 2009.

**4.06.030 Allocation of revenues from sales of treated water at Sawmill Cove Industrial Park.**

All of the revenues received from the sales of treated water at Sawmill Cove Industrial Park shall be deposited into the Water Fund.

5. **EFFECTIVE DATE.** This ordinance shall become effective on the day after the date of its passage.

**PASSED, APPROVED, AND ADOPTED** by the Assembly of the City and Borough of Sitka this 25<sup>th</sup> day of July, 2000.

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Stan J. Filler, Mayor

ATTEST:

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Colleen Pellett, CMC  
Municipal Clerk