CODE ORDINANCE

Sponsored by: Assemblymember Mayfield
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Ratified by the Voters: 10/04/16

MATANUSKA-SUSITNA BOROUGH
ORDINANCE SERIAL NO. 16-086

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY ENACTING AN AREAWIDE RETAIL SALES TAX ON MARIJUANA AND MARIJUANA PRODUCTS AND PLACING THE QUESTION BEFORE THE VOTERS AT THE OCTOBER 4, 2016, REGULAR BOROUGH ELECTION.

WHEREAS, Alaska Statute 17.38 was adopted by Ballot Measure 2, An Act to Tax and Regulate the Production, Sale and Use of Marijuana, and provided for legal sale of marijuana in Alaska; and

WHEREAS, under the provisions of AS 17.38, retail sales of marijuana will begin sometime in 2016; and

WHEREAS, A sales tax or an increase in the rate of levy of a sales tax must be approved by the voters; and

WHEREAS, any other intent and rationale for this ordinance is contained in the Informational Memorandum accompanying this ordinance.

BE IT ENACTED:

Section 1. Classification. Sections 1, 3 and 4 of this ordinance are non-code. Section 2 of this ordinance is of a

general and permanent nature and shall become a part of the Borough Code if the ballot question contained in Section 3 is approved by a majority of the voters at the October 4, 2016 regular Borough election.

Section 2. Adoption of Chapter. MSB 3.60 is hereby adopted to read as follows:

MSB 3.60 MARIJUANA SALES TAX.

MSB 3.60.010 Definitions.
MSB 3.60.020 Applicability.
MSB 3.60.030 Marijuana sales tax levy; Presumption of taxability.
MSB 3.60.040 Due date; Delinquency.
MSB 3.60.050 Obligation of seller to collect.
MSB 3.60.060 Seller registration; Certificate.
MSB 3.60.070 Receipts; Segregation.
MSB 3.60.080 Returns; Payments; Penalties.
MSB 3.60.090 Involuntary filing; Appeal.
MSB 3.60.100 Records; Confidentiality.
MSB 3.60.110 Records; Maintenance and inspection.
MSB 3.60.120 Suits for collection.
MSB 3.60.130 Tax lien.
MSB 3.60.140 Collection policy.
MSB 3.60.150 Prohibited acts.
MSB 3.60.160 Penalties for violations; Mandatory revocation.
MSB 3.60.170 Revocation of certificate; Notice.
MSB 3.60.180 Hearing; Appeal.
MSB 3.60.190 Reissue of certificate.
MSB 3.60.190 Regulations.
MSB 3.60.200 Refunds.

MSB 3.60.010 DEFINITIONS.

Any words, terms and phrases not defined in this section shall, if defined therein, have the meaning given in AS 17.38.900 or regulations adopted by the Alaska Marijuana Control Board, or otherwise shall

have their ordinary and common meaning. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"Buyer" means without limiting the scope thereof, any person or other entity that purchases or contracts to purchase marijuana or marijuana product.

"Certificate" or "Certificate of registration" means the certificate issued by the Finance Director under 3.60.060.

"Consideration" means anything of value, including but not limited to money, credit, rights, goods, services, and property, received by a seller from a buyer.

"Finance Director" means the Matanuska-Susitna Borough Finance Director or the director's designee.

"Marijuana" means all parts of the plant (genus) Cannabis, whether growing or not, the seed thereof, the resin extracted from any part of the plant, and any compound, manufacture, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate; marijuana does not include fiber produced from the stalks, oil or cake

made from the seeds of the plant, sterilized seed of the plant that is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products.

"Marijuana products" means fiber produced from the stalks, oil or cake made from the seeds of the plant, sterilized seed of the plant that is incapable of germination, concentrated marijuana and products that are comprised of marijuana, or marijuana combined with other ingredients such as, but not limited to, edible products, ointments, oils, mixtures, tinctures, textiles and resins. Marijuana products is intended to encompass any product grown or made from or containing any part of the plant (genus) Cannabis.

"Retail sale" means the transfer of any marijuana or marijuana product from a retail establishment or any person to any person or entity, for any consideration, for purposes other than resale. If state law is amended to allow other marijuana establishments to conduct sales of marijuana directly to buyers who are not licensed marijuana establishments, such sales will also be considered retail sales subject to taxation under this Chapter.

"Sale" means any retail sale where: (1) the buyer takes possession of, or title to, the purchased marijuana or marijuana product within the Borough; and/or (2) the seller receives consideration for the purchased marijuana or marijuana product within the Borough.

"Sales price" means the price of any marijuana or marijuana product.

"Seller" means any person or any other entity that sells or contracts to sell any marijuana or marijuana product to a buyer.

"Tax" means the marijuana sales tax as levied under this article.

"Quarter" means any one of the four consecutive three-month periods in a calendar year, the first of which commences January 1.

"Taxable retail sale" means any sale made within the Borough that is not entirely exempt from the tax levied under this article.

"Unremitted tax means"

(1) Any tax not remitted to the Borough that a seller is required by this article to collect from a buyer, notwithstanding whether the seller

actually collects such tax from a buyer; and

(2) Any estimated tax not remitted to the Borough.

MSB 3.60.020 APPLICABILITY.

Unless specifically provided otherwise, this chapter applies to all areas of the Matanuska-Susitna Borough including within the cities of Palmer, Wasilla, and Houston.

MSB 3.60.030 MARIJUANA SALES TAX LEVY; PRESUMPTION OF TAXABILITY.

(A) There is levied a tax of five percent (5%) upon the sales price of all retail sales of marijuana and marijuana products within the Matanuska-Susitna Borough. Every retail sale made within the Matanuska-Susitna Borough, unless explicitly exempted by this chapter, is presumed to be subject to the tax imposed under this chapter in any action to enforce the provisions of this chapter.

(B) Sales within the Cities of Palmer, Wasilla, and Houston are partially exempt from the Borough sales tax by the amount of tax the city separately levies on the same item up to three percent of the sales price.

MSB 3.60.040 DUE DATE; DELINQUENCY.

The obligation for the payment of the tax is upon the buyer. All taxes imposed by this article are due and payable by the buyer at the time of sale, or with respect to credit transactions at the time of collection, and are delinquent if not paid when due.

MSB 3.60.050 OBLIGATION OF SELLER TO COLLECT.

Every seller making sales taxable under this article shall collect the taxes from the buyer at the time of sale, or with respect to credit transactions at the time of collection of sales price, and shall deliver the same to the Matanuska-Susitna Borough in accordance with the requirements in this chapter.

MSB 3.60.060 SELLER REGISTRATION.

(A) All sellers of marijuana and marijuana products within the Matanuska-Susitna Borough must possess a current certificate of registration, for the purpose of collecting and remitting the tax under this article, prior to engaging in any retail sales or opening additional places of business. A seller with more than one location must obtain a certificate for each location.

(B) All sellers requiring a certificate of

registration under subsection (a) of this section must first possess current State of Alaska and Matanuska-Susitna Borough business licenses, a current state marijuana license as required by AS 17.38 if applicable, a Matanuska-Susitna Borough marijuana license or permit, if applicable, and a Matanuska-Susitna Borough conditional use permit, if applicable. Copies of the business licenses and all applicable licenses or permits must be provided to the Matanuska-Susitna Borough before a certificate of registration will be issued.

(C) Upon receipt of a properly executed application for the certificate of registration, on a form prescribed by the Finance Director, the Finance Director will issue without charge to the seller a certificate of registration. The certificate of registration shall bear the name of the seller and the address of the registered place of business. The certificate must be prominently displayed at the place of business along with all business and marijuana licenses.

(D) The certificate of registration is neither assignable nor transferable. The seller must immediately surrender the certificate to the Finance

Director if the seller ceases to do business at the location named on the certificate, or if the seller otherwise sells, assigns, transfers, conveys, or abandons the seller's business to any person or any other entity. When there is a change of address for the seller's place of business, a new certificate of registration is required bearing the same registration number, but showing the new location address.

(E) A seller must submit an updated application as prescribed by the Finance Director upon any change in form of ownership, business name, or contact information. The Finance Director, after receipt of the updated application, shall then determine whether a new certificate of registration should be issued. If a new certificate of registration is issued, the seller must first surrender the prior certificate of registration to the Finance Director before taking possession of the new certificate.

MSB 3.60.070 RECEIPTS; SEGREGATION.

Title to the taxes collected pursuant to this chapter shall vest in the Borough upon collection. The taxes shall be segregated by the seller from the funds of the seller or the business entity subject to the tax and safeguarded until transmitted to the Borough

as provided under MSB 3.60.080. A separate account shall be maintained for all taxes collected.

MSB 3.60.080 RETURNS; PAYMENTS; PENALTIES.

(A) On or before 30 days after the end of each quarter, each seller shall prepare and submit to the Finance Director a return for the preceding quarter upon forms furnished by the Finance Director. In addition, the operator shall submit other information and supporting papers required by regulations issued by the Finance Director. The operator shall sign the return and transmit it together with the taxes collected to the Finance Director on or before the due date. A return shall be filed even if no sales were made. The return shall set for the amount for:

(1) All sales of marijuana and marijuana product made within the Matanuska-Susitna Borough;

(2) The amount received from wholesale or otherwise nontaxable sales;

(3) The amount received from all taxable sales;

(4) The taxes collected;

(5) Such other information and supporting papers as the Finance Director may require.

(B) Taxes collected by a seller are due 30 days after the end of each quarter. If taxes collected by a seller have not been received by the Finance Director on or before the due date, the operator shall be charged interest at the rate of eight percent (8%) per annum for each day the tax is delinquent. In addition to interest, if taxes collected by an operator have not been received by the Finance Director on or before the due date, the seller shall incur a penalty as follows:

(1) Up to and including one month late, the penalty is five percent (5%) of the tax due;

(2) Over one month late, the penalty is an additional three percent (3%) of the tax due;

(3) Failure to file a return at all and when an involuntary filing under MSB 3.60.090 is made, the penalty is an additional ten percent (10%) of the tax due.

MSB 3.60.090 INVOLUNTARY FILING; APPEAL.

(A) Involuntary return. When a seller fails to file a return under MSB 3.60.080, or when the Finance Director finds that a return filed by a seller is not supported by the records maintained pursuant to MSB

3.60.080, the Finance Director may prepare and file a return or amended return on behalf of the seller. Taxes estimated on a return filed on behalf of a seller under this subsection may be premised upon any information that is available to the Finance Director including, among other things, comparative data for similar businesses. A seller for whom an involuntary return is filed under this subsection shall be liable for the taxes stated on the return, as well as the penalties and interest provided in subsection (B) of this section and pursuant to MSB 3.60.080 and 3.60.160.

(B) Assessment notice. When an involuntary return is filed, the Finance Director shall provide each seller by certified mail, return receipt requested, or personal service, a notice of assessment which includes the total amount of tax, penalties, and interest due. The notice shall inform the seller that the seller has ten calendar days from the date of the notice to contest the amount of the assessment and request a hearing in writing. The hearing request shall be made on a form provided by the Finance Director.

(C) Collection. If the seller does not pay the

tax in full or appeal the assessment, the Borough may proceed with an action as provided by MSB 3.60.120 and lien as provided by MSB 3.60.130 in addition to any other remedy under local, state, or federal law.

MSB 3.60.100 RECORDS; CONFIDENTIALITY.

(A) All returns filed with the Borough pursuant to this chapter and all financial data obtained from the returns are confidential and may not be released for inspection by any person except as provided in this section.

(B) The Manager, Finance Director, Attorney, or the Assembly may inspect the returns and all financial data on them. In addition, data may be disclosed for purposes as per MSB 3.60.100(D).

(C) The use of returns in any appeal under this chapter or in any criminal or civil action brought to enforce the terms of this article against any person is not a violation of this article. The Borough in the determination, prosecution, or defense of any such action may allege, prove, and produce any return filed by and on behalf of the defendant, including any data obtained from such return.

(D) Except as provided in this section, no person may divulge to another, any information obtained from

a return filed with the Borough or from data obtained from a return unless the person receiving the information is a person authorized to review the return under the terms of this chapter.

(E) It is the duty of the Finance Director to safely keep returns and all financial data taken from the returns secure from public and private inspection, except as provided by this chapter.

(F) This section does not prohibit the Borough from compiling and publishing statistical evidence concerning the data submitted, provided no identification of particular returns or reports is made, nor does it prohibit the Borough from releasing the business names, owners, mailing address and filing status to the public. "Filing status" means: whether the taxpayer is exempt, non-exempt, delinquent, or current in payment of the tax. Nothing in this section shall be deemed to prohibit an internal auditor from examining returns, provided that no information obtained from specific or identifiable returns shall be made available to persons other than those authorized to review returns under subsection (A) of this section.

(G) Any other disclosure of returns may be had

only upon court order.

MSB 3.60.110 RECORDS; MAINTENANCE AND INSPECTION.

(A) A seller shall maintain the following records for the two previous calendar years:

(1) complete and accurate books, records, and accounts, showing all inventory purchases and the gross receipts for all sales of marijuana and marijuana product made within the Borough; and

(2) All local, state, and federal tax reports and forms;

(3) All accounting records;

(4) All sales receipts; and

(5) All documentary evidence supporting any claimed exemption or adjustment due.

(B) Upon reasonable notice and during normal business hours, a seller must make all records and materials specified in subsection (A) of this section available for inspection by the Finance Director to ascertain the correctness of a return or for the purpose of determining the amount of tax collected or which should have been collected by any seller.

(C) The Finance Director may also conduct random audits of seller's monthly reports by examining any of the records and materials specified in subsection (a)

of this section and other data deemed necessary. Upon reasonable notice and during normal business hours, a seller must make all records and materials specified in subsection (A) of this section available for inspection by the Finance Director for any such audit.

(D) Where the constitution of the United States or of the state of Alaska requires, the Finance Director may obtain an administrative search warrant authorizing an inspection and exhibit the warrant to the person in charge of the premises before conducting the inspection. The Finance Director shall apply to the trial courts of the state to obtain an inspection warrant, stating in the application the name and address of the premises to be inspected, the authority to conduct the inspection, the nature and extent of the inspection, and the facts and circumstances justifying the inspection. Warrants issued under this section shall be returned within ten days.

MSB 3.60.120 SUITS FOR COLLECTION.

(A) Taxes due but not paid may be recovered by an action against the buyer. Taxes collected but not transmitted may be recovered by an action against the seller, and sales tax returns shall be prima facie proof of taxes collected but not transmitted.

(B) In addition to any other remedies and administrative procedures provided under this article, the Borough may file a civil action against any seller or buyer for recovery of any tax, unremitted tax, penalties, interest, costs, and fees, that have not been paid or remitted when due.

(C) Any person who holds an ownership interest in a seller, or any other person who is an agent of the seller, is personally liable for all taxes, penalties and interest due from such seller under this article.

MSB 3.60.130 TAX LIEN.

(A) Any tax, unremitted tax, penalties, interest, costs and fees that this article requires a seller or buyer to pay or remit shall constitute a lien in favor of the Borough upon all assets, earnings, revenue and property of the seller, other persons liable under subsection MSB 3.60.120(C), or the buyer. This lien arises when any such payment or remittance is not made when due and continues until the payment or remittance is fully satisfied through execution, foreclosure sale, or any other legal means. This lien is not valid as against a mortgagee, pledgee, purchaser, or judgment creditor until notice of the lien is recorded

in the office of the district recorder for the third judicial district.

(B) Prior to filing a lien, the Finance Director shall cause an additional written notice of intent to file to be mailed to the last known address of the seller.

(C) When recorded, a lien authorized under this section has priority over all other liens, except:

(1) liens for property taxes and special assessments;

(2) liens that were perfected before the recording of the sales tax lien for amounts actually advanced before the recording of the sales tax lien; and

(3) mechanics' and materialmen's liens which have been recorded before the recording of the sales tax lien.

(D) Upon such filing, the lien is superior to all other liens except as otherwise provided by state or federal law.

MSB 3.60.140 COLLECTION POLICY.

It shall be the policy of the Borough that delinquent taxes shall be promptly collected without

offset, compromise or time extensions for payment.

MSB 3.60.150 PROHIBITED ACTS.

(A) A person may not fail or refuse to pay the tax imposed by this chapter when it is due and payable to a seller authorized to collect the tax.

(B) A seller may not advertise or state to the public or to any buyer, or render directly or indirectly that the tax, or any part of it, shall be assumed or absorbed by the seller, or that the tax shall not be added to the sale or that it shall be refunded. A seller may not absorb or fail to add the tax or any part of it, or refund any tax or fail to state the tax separately to the buyer.

MSB 3.60.160 PENALTIES FOR VIOLATIONS; MANDATORY REVOCATION.

(A) A seller who fails to file a tax return as required by this chapter shall incur penalties and interest as provided in MSB 3.60.080. A second violation within a 24 month period shall additionally result in mandatory revocation of the certificate issued under MSB 3.60.060.

(B) A seller who fails to collect the tax levied by this chapter shall incur a civil penalty of double the tax which should have been collected.

(C) A seller who does not provide required records as per MSB 3.60.080 or who fails to permit inspection of the records as per MSB 3.60.110 shall incur a civil penalty of $1000. A second violation within a 24 month period shall additionally result in mandatory revocation of the certificate issued under MSB 3.60.060.

(D) A person who violates any part of the provisions of this chapter is guilty of an infraction and is also subject to the enforcement and penalties provided by MSB 1.45 and AS 29.25.070.

(E) Any violation of this chapter determined by the Finance Director to be made in a willful, flagrant, or recalcitrant manner by any seller shall result in a mandatory revocation of the certificate issued under MSB 3.60.060.

(F) All penalties shall be considered cumulative remedies and shall not relieve an operator or guest of the duties imposed under this chapter.

MSB 3.60.170 REVOCATION OF CERTIFICATE; NOTICE.

(A) In addition to the mandatory revocations under MSB 3.60.160, the Finance Director may revoke a certificate of registration if a seller fails to

comply with any of the provisions of this article. A seller may not engage in retail sales while the certificate of registration is revoked.

(B) The Finance Director may revoke the certificate of registration by issuing a notice of intent to revoke to the seller listing the reasons for proposed revocation. The notice shall inform the seller that the seller has ten calendar days from the date of the notice to contest the notice and request a hearing in writing.

(C) If no hearing is requested, the Finance Director shall issue the seller a notice of revocation and the seller may no longer sell under this chapter.

(D) Any seller who violates any requirement of this section is subject to the penalties provided under this article and any other provision of local, state, or federal law. The Matanuska-Susitna Borough is also entitled to injunctive relief to prevent the seller from engaging in retail sales without a certificate of registration.

MSB 3.60.180 HEARING; APPEAL.

(A) Hearing. If the hearing provided for by MSB 3.60.090 or MSB 3.60.170 is requested by the seller, the Finance Director shall hold a hearing

within 30 calendar days and notify the seller at least 15 calendar days in advance of the date, time and place of the hearing. The seller shall make available for inspection and copying all the seller's books, records, or any evidence which the seller relies on in contesting the assessment under MSB 3.60.090 or notice of intent under MSB 3.60.170 and the same shall become part of the record. The Finance Director shall disclose to the seller all the documents or other evidence which the director relied upon in making the tax assessment under MSB 3.60.090 or notice of intent under MSB 3.60.170 and the same shall become part of the record. Hearings for a single seller with more than one location, filing period, or appeal may be consolidated.

(B) Determination. Within ten calendar days of the hearing the Finance Director shall issue a written decision with findings of fact and conclusions. The notice shall also provide that it is the Finance Director's final decision and advise the seller of the seller's right to appeal the decision to the Superior Court within 30 calendar days.

(C) Appeal. An appeal may be filed pursuant to Part 6 of the Alaska Rules of Appellate Procedure. On

appeal taken, the Superior Court shall defer to the findings of fact rendered by the Finance Director if they are supported by substantial evidence in the record. If the amount of the tax, interest, and penalty is upheld by the court on appeal, the court shall issue a judgment for the amount, plus additional interest, penalty (if any), costs, and attorney fees. The Finance Director's decision is not stayed on appeal unless ordered by the court.

MSB 3.60.190 REISSUE OF CERTIFICATE.

(A) Any person who has a certificate revoked is not eligible to receive another certificate for a period of one year from the date of revocation. In addition, any person who has a certificate revoked is not eligible to receive another certificate until all prior taxes, penalties fees and interest due are paid.

(B) Any entity which has a certificate revoked is not eligible to receive another certificate for a period of one year from the date of revocation. Any person who holds an ownership interest in the entity is likewise not eligible to receive another certificate for a period of one year from the date of revocation. In addition, any entity who has a certificate revoked is not eligible to receive another

certificate until all prior taxes, penalties fees and interest due are paid. Any person who holds an ownership interest in the entity is likewise not eligible to receive another certificate until all prior taxes, penalties fees and interest due are paid.

MSB 3.60.200 REGULATIONS.

The Finance Director may adopt regulations providing for the application and interpretation of this chapter and providing methods and forms for reporting and collecting the taxes imposed by this chapter.

MSB 3.60.210 REFUNDS.

(A) The Finance Director shall refund to a seller the amount of taxation paid to the Finance Director sales not subject to taxation or any overpayment of taxes remitted to the Borough.

(B) The seller shall apply for a tax refund in writing on a form provided by the Finance Director not later than two years from the date the tax is transmitted to the Finance Director.

Section 3. Ratification. At the regular election to be held on October 4, 2016, the following question will be placed before all qualified voters in the Matanuska-Susitna Borough:

AREAWIDE RETAIL SALES TAX OF FIVE PERCENT (5%) ON MARIJUANA AND MARIJUANA PRODUCTS WITH A LIMITED EXEMPTION FOR SALES TAX PAID TO A CITY.

Shall the Matanuska-Susitna Borough (1) enact an areawide five percent (5%) tax on the retail sale of marijuana and marijuana products, and (2) establish a limited exemption up to three percent (3%) for marijuana and marijuana products sales taxed by the cities?

Yes _____ No _____

Section 4. Effective date. Sections 1, 3 and 4 of this ordinance take effect immediately. Section 2 takes effect upon certification of the election results if the ballot question contained in Section 3 is approved by a majority of the voters at the October 4, 2016 regular Borough election.

ADOPTED by the Matanuska-Susitna Borough Assembly this 2 day of August, 2016.

VERN HALTER, Borough Mayor

ATTEST:

LONNIE R. McKECHNIE, CMC, Borough Clerk

(SEAL)

YES: Colligan, Mayfield, Doty, and Kowalke

NO: Beck and McKee