

RECEIVED in the TRIAL COURTS  
State of Alaska Third District  
at Palmer

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

SEP 19 2016

Clerk of the Trial Courts  
By \_\_\_\_\_ Deputy

THOMAS HANNAM, et al. )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 MATANUSKA-SUSITNA BOROUGH, )  
 et al. )  
 )  
 Defendants. )

Case No. 3PA-16-01952 CI

MATANUSKA-SUSITNA BOROUGH'S OPPOSITION TO REQUEST  
FOR PRELIMINARY AND PERMANENT INJUNCTION  
(LATCHES)

COMES NOW the Matanuska-Susitna Borough (the "Borough"), and hereby presents this Opposition to Request for Preliminary and Permanent Injunction requested on page 34 of the complaint/motion<sup>1</sup>. The Borough's opposition to the Plaintiffs' specific request for injunctive relief at this time is based upon the doctrine of latches as is discussed further below.

Plaintiffs in filed a complaint *pro per* seeking declaratory judgment and injunctive relief that an issue be removed from the ballot or not counted. Plaintiffs have delayed too long in bringing a request for this relief. Because of this delay, and

<sup>1</sup> The complaint appears to be a complaint and motion for judgment all wrapped together. The Borough may refer to it as a "complaint" or "motion."

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regardless of any other merits of the case<sup>2</sup>, this injunctive relief cannot be granted because it will virtually destroy the Matanuska-Susitna Borough's ability to conduct a clear and organized election. Plaintiffs' requests will jeopardize the accuracy and results of all other questions on the ballot, cause confusion, and disrupt the orderly conduct of the 2016 Borough regular election.

#### FACTS

##### A. The initiative at issue here.

To place a voter initiative on a regular election ballot, the question must be certified at least 75 days before a regular election. MSB 25.05.067.

On May 22, 2015, the Matanuska-Susitna Borough Clerk received an application for initiative petition titled "Application for Ballot Initiative to Prohibit Marijuana Businesses Except Those Involving Industrial Hemp in the Matanuska-Susitna Borough<sup>3</sup>." See Affidavit of Lonnie McKechnie. The Borough Clerk certified the application and prepared petition

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<sup>2</sup> Claims are either not ripe or meritless as will be addressed by the Borough in other pleadings. However, the conduct of the upcoming election is such a critical issue that the Borough is responding separately to the request for injunctive relief.

<sup>3</sup> This application was essentially a re-submittal of a prior application submitted May 7, 2015 "Application for Ballot Initiative to Prohibit Marijuana businesses in the Matanuska-Susitna Borough" which was rejected by the Clerk.

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signature books for sponsors to circulate as per 29.26.120. Id. After the sponsors were provided additional time to gather signatures as per AS 29.26.140(b), the Borough Clerk certified the petition on September 25, 2015 - one year ago. Id. The proposed Initiative Ordinance was assigned a number 15-088. Id.

The 2015 Borough regular election was held on the first Tuesday of October which was October 6, 2015. Id. Since the initiative proposing Initiative Ordinance 15-088 was certified less than 75 days before the election, it was not placed on the 2015 ballot. Id. Initiative Ordinance 15-088 was held to be placed on the next regular or special election. Id. The 2016 Borough regular election is the only election by the Matanuska-Susitna Borough since October 2015. Id.

The news media reported on the pending Initiative Ordinance both before and after it was certified. Id. Moreover, proposed Initiative Ordinance 15-088 was loaded to the Borough's website as of February 10, 2016. See Affidavit of Brenda Henry. Finally, plaintiff Rhonda Marcy received a specific copy of the proposed Initiative Ordinance on February 29, 2016. Id.

B. The upcoming election and ballot preparation.

The Matanuska-Susitna Borough holds regular elections every year on the first Tuesday of October. AS 29.26.040; MSB

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25.05.030. The 2016 regular election will be held on Tuesday, October 4, 2016. See Affidavit of Lonnie McKechnie.

The Matanuska-Susitna Borough has 41 voting precincts spread among the 7 different Assembly/School board districts. Id. The various ballot types at the precincts correlate to the questions appearing on the ballot in those areas. Id. Not all residents of the Matanuska-Susitna Borough receive the same ballot to be voted because certain questions are confined to only some areas of the Borough. Id. The 2016 Borough regular election has 7 different ballot types and each ballot type has questions appearing on different physical locations of the ballot. Id. The 2016 regular Borough election has 3 issues which all voters in the Borough will consider: Initiative Ordinance 15-088, a marijuana sales tax, and a bond proposition. Id. There are races for 2 assembly seats and 3 school board seats and only voters in the applicable assembly and school districts may vote in those races. Id. Finally, the 2016 regular Borough election has a service area annexation and only voters in the existing service area and area proposed to be annexed may vote on that question. Id.

In conducting regular elections, the Borough allows for absentee-by-mail and absentee-in-person voting. Id. These alternate voting methods allow voters to participate in a local

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election and cast ballots in advance of the regular election date. Id. For the 2016 regular election, approximately four hundred sixty eight (468) absentee-by-mail ballots were mailed to voters on Thursday, September 15, 2016. Id. Absentee-in-person voting begins today, Monday, September 19, 2016. Id.

To conduct an election, the Matanuska-Susitna Borough provides voters with paper ballots. Id. These ballots are marked by a voter and then placed in a ballot box. Id. Counting of these ballots is done via an automatic counting machine called an Accuvote machine. Id. The machine operates based upon programming contained on an external memory card (which is also sometimes referred to as a programming card). Id. Since the system of voting requires that the machine accurately read and tabulate votes, there are several important details which must be addressed. Id.

It is critically important that ballots are printed and formatted with a specific content, shape, and size to fit the machine. Id. Ballots also contain a series of lines on the side such that the precise arrangement of the pre-printed text and ovals for voter marking can be determined and matched to the programming of the Accuvote machine. Id. If not done properly,

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the machine may not "look" for the votes as to any one question on the correct spot on the ballot. Id.

The Borough Clerk works with specialized vendors to prepare memory cards and print the ballots. Id. The Borough does not own any Accuvote machines. Id. The machines are owned by the State of Alaska and since State elections are in August and November, the Borough is able to use them for the October election. Id.

To ensure that the Accuvote machine tabulates the specific marks on the ballot to the correct questions at issue, the Borough first works with a programmer. Id. The programmer is provided text of the questions to be placed on a ballot. Id. The programmer prepares ballot types and works closely with the printer to make sure the format and content are clear and organized. Id. At the same time as the ballot is being prepared, a memory card for each machine is programmed so that it will read specific ballot types and count various questions. Id. The programmer prepares memory cards which instruct the machine how to read ballots. Id. To do this, the memory cards are sent to the vendor in Omaha, NE, programmed, and returned to the Borough. Id.

Once the programmer and Borough Clerk develop various ballot types, and usually while programming of the memory cards is

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occurring, the Borough uses a separate vendor to print tens of thousands of ballots. Id.

Upon completion of work by the programmer and the printer, the memory cards and the ballots are delivered to the Borough. Id. After delivery back to the Borough, the memory cards are tested in the Accuvote machines to make sure the machine is reading each ballot type properly. Id. If there is a failure, the memory card must be re-programmed by the vendor and then re-tested to ensure accuracy. Id. Upon a passing test, memory cards are locked into their particular Accuvote machines. Id.

The results of all elections, based upon the specific marks on the various ballot types, are recorded and stored on the memory cards of the Accuvote machines. Id.

For the 2016 regular election, approximately 69,875 printed ballots comprised of the 7 ballot types were delivered to the Matanuska-Susitna Borough on August 25, 2016. Id. In addition, on approximately August 22, 2016, programming cards for each of the various ballot types were delivered to the Borough. Id. The ballot cards were tested against the various ballot types and verified on September 8, 2016. Id. After successful testing, each memory card was locked into its specific Accuvote machine on September 8, 2016. Id.

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Distribution of election materials to 41 precincts occurs on September 28 through October 1, 2016. Id. Specifically, precinct officials for each of the 41 precincts are assigned a date for training. Id. The Borough Clerk assigns a Chairperson for each precinct. Id. On the day of training, the Chairperson takes custody of the election materials including the Accuvote machine with the memory card locked in. Other materials given to the Chairperson are the ballot, signs, voter registration list, maps and other materials to conduct the election. Id.

Four hundred sixty eight (468) absentee-by-mail ballots were mailed on Thursday, September 15, 2016. Absentee-in-person voting begins today, Monday, September 19, 2016. In person voting at the polls will be Tuesday, October 4, 2016.

C. The complaint here.

On September 1, 2016, plaintiffs filed a 35 page "Expedited Complaint for Declaratory and Injunctive Relief" *pro per*. Relevant here, on page 34 of the complaint, the plaintiffs seek injunctive relief as follows:

B. For a preliminary and permanent injunction directing as follows:

1. To prevent the zoning initiative from being placed before the voters;
2. To have the zoning initiative removed from the Ballot; and

3. To prevent any votes from being counted on the zoning initiative, in the event that it is voted on, until after this matter is resolved.

By way of history, the complaint alleges that the plaintiffs "explained to the Assembly" that the proposed initiative is illegal. See Complaint at page 5, line 18. The plaintiffs further allege that notwithstanding this knowledge, the Assembly enacted a moratorium in Ordinance 16-046. That ordinance was adopted on May 3, 2016. See Affidavit of Lonnie McKechnie.

Simultaneous with filing the complaint, the plaintiffs requested expedited consideration. See Emergency Motion for Expedited Consideration. Expedited consideration was granted *ex parte* by the court and the time to answer/oppose was shortened to 10 days from distribution of the order. See Order dated 7 September, 2016.

#### LAW

The doctrine of latches creates an equitable defense when a party delays asserting a claim for an unconscionable period. Concerned Citizens of South Kenai Peninsula v. Kenai Peninsula Borough, 527 P.2d 447, 457 (Alaska 1974). In Citizens of South Kenai, several taxpayers sued to dissolve the South Kenai Peninsula Hospital Service Area. Id. at 449. One of the issues brought forth was whether a service area can be formed which

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encompasses cities capable of providing the same service. Id. The trial court ruled that the plaintiffs waited too long to bring that claim. Id. at 457.

On appeal, the Alaska Supreme Court outlined the doctrine of latches:

The doctrine creates an equitable defense when a party delays asserting a claim for an unconscionable period. A court must find both an unreasonable delay in seeking relief and resulting prejudice to the defendant. Sustaining this defense requires a decision by the trial court that the equities of the case justify refusal to hear and decide a party's claim. It is an act of discretion which will not be interfered with unless we feel a definite and firm conviction that a mistake has been committed.

No specific time must elapse before the defense of latches can be raised because the propriety of refusing to hear a claim turns as much upon the gravity of the prejudice suffered by the defendant as the length of a plaintiff's delay. Where harm to the defendants would be great, as in a belated attack upon local government, a plaintiff's delay in asserting his claim need not be extreme.

Id. (footnotes omitted).

Noting that the plaintiffs waited five years to bring suit and the disruption that would occur in disbanding the service area, the Supreme Court upheld the application of latches and agreed the issue could not be considered.

The Alaska Supreme Court reached the opposite conclusion in Moore v. State, 553 P.2d 8 (Alaska 1976). In Moore, citizens sued

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over oil and gas leases. Id. at 14. The State of Alaska issued formal notice of sale in November, 1973, conducted a sale in December 1973, issued leases in January, 1974 and issued the first drilling permit in November 1974. Id. at 15. Suit was filed against the State in December 1974. Id. at 16. The trial court ruled that latches applied and dismissed the case.

In discussion the doctrine of latches, the Alaska Supreme Court clarified:

The element of delay has been described as a 'lack of diligence' and 'neglect, for an unreasonable and unexplained length of time, under circumstances permitting diligence.'

. . .

One of the factors we will consider in measuring the plaintiffs' delay is when, under the circumstances, it became no longer reasonable for plaintiffs to assume that defendants would comply with the law. We will also look to that point in time when there were positive steps taken by defendants which made their course of conduct irrevocable, and would have galvanized reasonable plaintiffs into seeking a lawyer.

Id. at 16-17 (quotations and footnotes omitted).

In considering delay, the court found that the issuance of the drilling permit marked the time at which the State was irrevocably committed such that plaintiffs reasonably could have been expected to seek legal remedies. Id. at 18. Suit was filed 3 weeks later.

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In considering prejudice, the court found that monies spent on permits, preparing the sale and other expenditures were not prejudicial because: "The seeking of the permits alone cannot constitute the kind of serious prejudice required to justify the imposition of latches." Id. at 20. The Court also noted: "In the case at bar, plaintiffs are not trying to halt a project on which large amounts of state funds have already been spent." Id.

Finally, in another case reversing a trial court, the Alaska Supreme Court applied latches and stopped a lawsuit in City and Borough of Juneau v. Breck, 706 P.2d 313 (Alaska 1985). In Breck, the City and Borough of Juneau sought proposals for a parking garage in December, 1983. Id. at 314. The plaintiff appeared before the Borough Assembly in April 1984 to complain about the procedure 2 days before a proposal was selected. Id. Nonetheless, in May 1984 a contract was executed. The plaintiff continued to appear at least eight more times to complain about the legality of the issue and was aware construction began. Id. The plaintiff alleged that by June 1984 she realized she would "not get anywhere" with complaints to the Assembly. Id. The plaintiff filed suit in August 1984. Id. at 316. The Supreme Court summarized that suit was filed eight months after the city sought proposals, four months after the contract, and at the time suit

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was filed, approximately fifty per cent of the project was completed. Id. at 317.

The trial court refused to apply latches. In reversing the trial court, the Supreme Court first noted that "once the contract was signed and construction commenced, a reasonable person would have realized that CBJ would not change its mind with respect to the project." Id. at 316. Additionally, the Supreme Court expressly rejected the suggestion that *pro per* litigants are somehow automatically excused from delay:

In reaching our holding on the latches issue, we reject the superior court's conclusion that Breck's delay in bringing suit was excusable because, considering her lack of knowledge about how to bring a lawsuit, she did the best she could in the circumstances. Implicit in the superior court's view is the notion that delay resulting from insufficient resources is always a valid excuse, so long as the plaintiff proceeds in as diligent a manner as possible. We think such an approach is inappropriate. Although this element should be factored into the equity equation, the question cannot be simply one of negligence.

Id. at 316 (footnotes omitted).

The court noted the prejudice at issue was an expected \$1.5-2 million dollars to cancel the contract and then re-issue it.

Id. Given the delay and resulting potential prejudice, the Alaska Supreme Court applied the doctrine of latches to bar the claims and did not consider them. Id. at 317.

## ARGUMENT

Plaintiffs failed to diligently and timely pursue their claims. Because of those delays, regardless of the merits<sup>4</sup> of the claims, the requested injunctive relief in the complaint is barred by laches. Ballots have been prepared and memory cards calibrated to the specific ballot types. The memory cards have been tested, verified, and locked into the Accuvote machines. Most importantly, even with expedited consideration being granted and time shortened to 10 days, voting has already started. Simply put, the plaintiffs should have sought relief long ago.

The plaintiffs allege on May 3, 2016, with the passage of Ordinance 16-046 establishing a moratorium, "this created the case of actual controversy." See Complaint at page 6, line 12. However, even before that date, plaintiffs allege that they served written notice on the Assembly before May 3, 2016. See Complaint at page 6, line 1. Newspaper articles show general publicity of the impending initiative as early as May 30, 2015 and through February 3, 2016. The proposed Initiative Ordinance was loaded onto the Borough's website on February 10, 2016.

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<sup>4</sup> This case is not ripe and meritless as will be addressed by the Borough in other pleadings. However, the conduct of the upcoming election is such a critical issue that the Borough is responding separately to the request for injunctive relief.

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Plaintiff Rhonda Marcy was given a copy of proposed Initiative Ordinance 15-088 on February 29, 2016.

Yet despite all this knowledge, and general publicity of the proposed Initiative Ordinance, there was nothing which would have obstructed the plaintiffs' diligence in bringing this case. See Moore, 553 P.2d at 16. They could have brought it sooner.

The result of this delay is not mere prejudice, but actual, physical impossibility. Even if the plaintiffs are correct in all of their claims of error<sup>5</sup>, removing proposition B-1 from the ballot is impossible at this time. Approximately 69,875 ballots have been printed, programmed memory cards for voting machines have been calibrated to those ballots and locked into specific machines. Approximately four hundred sixty eight (468) absentee-by-mail ballots were mailed on Thursday, September 15, 2016, and absentee-in-person voting commenced today, Monday, September 19, 2016 at absentee-in-person voting sites in the Matanuska-Susitna Borough. The ballots cannot be altered.

In-person voting at 41 various precincts throughout the Borough will occur on Tuesday, October 4, 2016. Distribution of election materials to 41 precincts occurs on September 28 through

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<sup>5</sup> For purposes of a latches determination, success of the claims is irrelevant. The Borough opposes the substance of the claims in a separate motion.

October 1, 2016. Any attempt to stop it at this late hour will risk the orderly conduct of the election and call into question the results of all the other questions appearing on the ballot.

To reprogram memory cards in order to not count the results of Initiative Ordinance 15-088, it would require that the Borough Clerk:

- 1) break the locks on the machines;
- 2) remove the memory cards;
- 3) send them to the programmer in Omaha, NE, with instructions to re-program the cards to not count that one question on the 7 different ballot types;
- 4) wait for the cards to be returned;
- 5) upon their return, test the cards against the specific ballot types to ensure accuracy;
- 6) lock them into the machines;
- 7) distribute the machines to the precinct Chairperson for all 41 precincts.

In the professional opinion of the Borough Clerk, this cannot be done by October 3, 2016.

#### CONCLUSION

Plaintiffs raised claims to the Borough Assembly that Initiative Ordinance 15-088 is illegal. The initiative was the

subject of news articles since May 2015, was loaded to the Borough's website in February, 2016, and plaintiff Rhonda Marcy was given a copy of it in February, 2016. Despite this knowledge and general publicity, and even though plaintiffs claim that the controversy became live on May 2, 2016, plaintiffs waited several months and waited until approximately 4 weeks before the election to file suit. Preparations for the election are complete and even with expedited consideration, voting is already occurring.

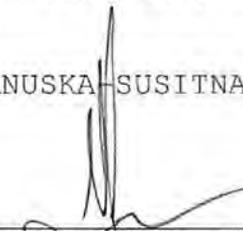
It is literally impossible to prevent the initiative from being placed before the voters because voting has started. It is literally impossible to remove the initiative from the ballot because voting has started. It is overly prejudicial, burdensome and will cause confusion and disrupt the orderly election process to attempt to reprogram all the voting cards while voting is occurring. It will call into question all the other questions on the ballot.

The equities of this case justify refusal to consider the requested injunctive relief. Given the knowledge of the plaintiffs, the legal impossibility to remove a question from the ballot and the resulting massive prejudice of any attempt to reprogram Accuvote memory cards, the court must apply laches and bar consideration of injunctive relief.

WHEREFORE the Matanuska-Susitna Borough respectfully requests this Honorable Court DENY the plaintiffs' Request for Preliminary and Permanent Injunction and BAR any further consideration of the requested injunctive relief under the doctrine of latches.

DATED this 19th day of September, 2016, in Palmer, Alaska.

MATANUSKA-SUSITNA BOROUGH

By: 

Nicholas Spiropoulos  
Borough Attorney  
Alaska Bar No. 0010068

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

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Case No. 3PA-16-01952 CI

STATE OF ALASKA )  
 ) ss.  
 THIRD JUDICIAL DISTRICT )

AFFIDAVIT OF LONNIE MCKECHNIE  
IN SUPPORT OF  
MATANUSKA-SUSITNA BOROUGH'S OPPOSITION TO REQUEST  
FOR PRELIMINARY AND PERMANENT INJUNCTION  
(LATCHES)

Lonnie McKechnie, being first duly sworn upon oath or affirmation, deposes and states as follows:

1. I am the Clerk for the Matanuska-Susitna Borough ("Borough").

2. I have personal knowledge of the facts contained herein.

3. My duties include processing of applications and petitions for initiatives and administering local elections in the Matanuska-Susitna Borough.

4. On May 22, 2015, I received an application for initiative petition titled "Application for Ballot Initiative to Prohibit Marijuana Businesses Except Those Involving Industrial

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Hemp in the Matanuska-Susitna Borough and a copy is attached (Exhibit A).

5. This application was essentially a re-submittal of a prior application submitted May 7, 2015, "Application for Ballot Initiative to Prohibit Marijuana businesses in the Matanuska-Susitna Borough" which I rejected.

6. I certified the May 22, 2015 application and prepared petition signature books for sponsors to circulate as per 29.26.120.

7. After the sponsors were provided additional time to gather signatures as per AS 29.26.140(b), I certified the petition on September 25, 2015.

8. The proposed Initiative Ordinance was assigned a number 15-088 and a copy is attached (Exhibit B).

9. The 2015 Borough regular election was held on the first Tuesday of October which was October 6, 2015.

10. Since the initiative proposing Initiative Ordinance 15-088 was certified less than 75 days before the election, it was not placed on the 2015 ballot.

11. Initiative Ordinance 15-088 was held to be placed on the next regular or special election.

12. The 2016 Borough regular election is the only election by the Matanuska-Susitna Borough since October 2015.

13. The news media reported on the pending Initiative Ordinance both before and after it was certified for the ballot. News articles from May 30, 2015, August 10, 2015 and February 3,

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2016 are attached to this affidavit (Exhibit C, Exhibit D, Exhibit E).

14. The 2016 regular election will be held on Tuesday, October 4, 2016.

15. The Matanuska-Susitna Borough has 41 voting precincts spread among the 7 different Assembly/School board districts.

16. The various ballot types at the precincts correlate to the questions appearing on the ballot in those areas.

17. Not all residents of the Matanuska-Susitna Borough receive the same ballot to be voted because certain questions are confined to only some areas of the Borough.

18. The 2016 Borough regular election has 7 different ballot types and each ballot type has questions appearing on different physical locations of the ballot.

19. The 2016 regular Borough election has 3 issues which all voters in the Borough will consider: Initiative Ordinance 15-088, a marijuana sales tax, and a bond proposition.

20. The 2016 regular Borough election has races for 2 assembly seats and 3 school board seats and only voters in the applicable assembly and school districts may vote in those races.

21. The 2016 regular Borough election has a service area annexation and only voters in the existing service area and area proposed to be annexed may vote on that question.

22. In conducting regular elections, the Borough allows for absentee-by-mail and absentee-in-person voting.

23. These alternate voting methods allow voters to participate in a local election and cast ballots in advance of the regular election date.

24. For the 2016 regular election, approximately four hundred sixty eight (468) absentee-by-mail ballots were mailed to voters on Thursday, September 15, 2016.

25. Absentee-in-person voting begins today, Monday, September 19, 2016.

26. The Matanuska-Susitna Borough provides voters paper ballots.

27. These ballots are marked by a voter and then placed in a ballot box.

28. Counting of these ballots is done via an automatic counting machine called an Accuvote machine. The machine operates based upon programming contained on an external memory card (which is also sometimes referred to as a programming card).

29. Since the system of voting requires that the machine accurately read and tabulate votes, there are several important details which must be addressed.

30. It is critically important that ballots are printed and formatted with a specific content, shape and size to fit the machine.

31. Ballots also contain a series of lines on the side such that the precise arrangement of the pre-printed text and ovals for voter marking can be determined and matched to the programming of the Accuvote machine.

32. If not done properly, the machine may not "look" for the votes as to any one question on the correct spot on the ballot.

33. I work with specialized vendors to prepare memory cards and print the ballots.

34. The Borough does not own any Accuvote machines.

35. The machines are owned by the State of Alaska and since State elections are in August and November, the Borough is able to use them for the October election.

36. To ensure that the Accuvote machine tabulates the specific marks on the ballot to the correct questions at issue, the Borough first works with a programmer.

37. The programmer is provided text of the questions to be placed on a ballot.

38. The programmer prepares sample ballot types and works closely with the printer to make sure the format and content are clear and organized.

39. At the same time as the ballot is being prepared, a memory card for each machine is programmed so that it will read specific ballot types and count various questions.

40. The programmer prepares memory cards which instruct the machine how to read ballots.

41. To do this, the memory cards are sent to the vendor in Omaha, NE, programmed, and returned to the Borough.

42. Once the programmer and I develop various ballot types, and usually while programming of the memory cards is occurring,

the Borough uses a separate vendor to print tens of thousands of ballots.

43. Upon completion of work by the programmer and the printer, the memory cards and the ballots are delivered to the Borough.

44. After delivery back to the Borough, the memory cards are tested in the Accuvote machines to make sure the machine is reading each ballot type properly.

45. If there is a failure, the memory card must be re-programmed by the vendor, and then re-tested to ensure accuracy.

46. Upon a passing test, memory cards are locked into their particular Accuvote machines.

47. The results of all elections, based upon the specific marks on the various ballot types, are recorded and stored on the memory cards of the Accuvote machines.

48. For the 2016 regular election, approximately 69,875 printed ballots comprised of the 7 ballot types were delivered to the Matanuska-Susitna Borough on August 25, 2016.

49. In addition, on approximately August 22, 2016 programming cards for each of the various ballot types were delivered to the Borough.

50. The ballot cards were tested against the various ballot types and verified on September 8, 2016.

51. After successful testing, each memory card was locked into its specific Accuvote machine on September 8, 2016.

52. Distribution of election materials to 41 precincts occurs on September 28 through October 1, 2016.

53. Specifically, precinct officials for each of the 41 precincts are assigned a date for training.

54. I assign a Chairperson for each precinct.

55. On the day of training, the Chairperson takes custody of the election materials including the Accuvote machine with the memory card locked in.

56. Other materials given to the Chairperson are the ballot, signs, voter registration list, maps and other materials to conduct the election. Id.

57. The Borough Assembly enacted a moratorium as to commercial marijuana in Ordinance 16-046. That ordinance was adopted on May 3, 2016 and is attached (Exhibit F).

58. I have personally administered every election in the Matanuska-Susitna Borough since 2008.

59. Based upon that experience, I do not believe there is time to reprogram memory cards in order to not count the results of Initiative Ordinance 15-088.

60. To reprogram memory cards in order to not count the results of Initiative Ordinance 15-088, I would:

- 1) break the locks on the machines;
- 2) remove the memory cards;
- 3) send them to the programmer in Omaha, NE, with instructions to re-program the cards to not count that one question on the 7 different ballot types;

BOROUGH ATTORNEY'S OFFICE  
Matanuska-Susitna Borough  
350 East Dahlia  
Palmer, Alaska 99645  
(907) 861-8677  
FAX: (907) 861-8559

- 4) wait for the cards to be returned;
- 5) upon their return, test the cards against the specific ballot types to ensure accuracy;
- 6) lock them into the machines;
- 7) distribute the machines to the precinct Chairperson for all 41 precincts.

61. In my professional opinion, this cannot be done by October 3, 2016.

62. In my professional opinion, attempting to reprogram the Accuvote memory cards at this time will disrupt the orderly conduct of the election and call into question the results of all other questions on the ballot.

63. I have read the Matanuska-Susitna Borough's Opposition to Request for Preliminary and Permanent Injunction (Latches) and all of the factual allegations therein are true and correct to the best of my knowledge.

FURTHER YOUR AFFIANT SAYETH NAUGHT.



Lonnie McKechnie, CMC  
Borough Clerk  
Matanuska-Susitna Borough

SUBSCRIBED and SWORN or affirmed to before me this 19th day of September, 2016, in Palmer, Alaska.



  
Notary Public in and for the  
State of Alaska  
My Commission Expires: 3/8/2020

CODE ORDINANCE

Submitted to Borough Clerk: \_\_\_\_\_

Certified by Borough Clerk: \_\_\_\_\_

Placed Before the Voters at the Regular Election of: \_\_\_\_\_

Election Certified: \_\_\_\_\_

Passed: \_\_\_\_\_

Effective Date: \_\_\_\_\_

RECEIVED

MAY 27 2015

CLERKS OFFICE

**MATANUSKA-SUSITNA BOROUGH  
ORDINANCE SERIAL NO. 15-\_\_\_\_\_**

**AN INITIATIVE ORDINANCE OF THE VOTERS OF THE MATANUSKA-SUSITNA  
BOROUGH AMENDING TITLE 8, BY ADOPTING NEW CHAPTER 8.22 MARIJUANA  
LICENSE REFERRALS, PROHIBITING MARIJUANA BUSINESSES EXCEPT THOSE  
INVOLVING INDUSTRIAL HEMP**

WHEREAS, the residents of Alaska passed Ballot Measure No. 2 - 13PSUM An Act to Tax and Regulate the Production, Sale, and Use of Marijuana, codified as Alaska Statute Chapter 17.38; and

WHEREAS, the Ballot Measure creates classes of registrations, licenses, or permits to enable the lawful conduct of certain types of marijuana commerce and business; and

WHEREAS, the conduct of these commercial and business activities is unlawful without the appropriate registration, license, or permit; and

WHEREAS, AS 17.38.110 Local Control, enacted by Ballot Measure 2, empowers municipalities to prohibit the operation of these businesses by enactment of an ordinance or voter initiative; and

WHEREAS, prohibiting the operation of commercial marijuana businesses does not infringe upon the personal use rights guaranteed by Ballot Measure 2; and

WHEREAS, the voters do not seek to inhibit the development of industrial hemp;

Therefore, by voter initiative, BE IT ENACTED:

**Section 1. Classification.** This ordinance is of a general and permanent nature and shall become part of the Matanuska-Susitna Borough Code.

**Section 2.** Matanuska-Susitna Borough Code Title 8, Health and Welfare, is hereby amended by the addition of a new Chapter 8.22, to read as follows:

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MAY 22 2015

CLERKS OFFICE

Chapter 8.22

MARIJUANA LICENSE REFERRALS

Sections

8.22.010 Definitions

8.22.020 Marijuana businesses prohibited

8.22.010 Definitions.

As used in this chapter, the words shall have meanings as follows:

- "Industrial hemp" means the plant *Cannabis sativa* and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis and shall also include any definition of "industrial hemp," or similar term serving the same purpose, adopted by laws or regulations by the State of Alaska.

- "Marijuana business" means any and all business, acts, or commerce subject to registration or licensure pursuant to Alaska Statute Chapter 17.38.

8.22.020 Marijuana businesses prohibited.

(a) Marijuana businesses are prohibited in the borough in the areas outside of cities.

(b) The prohibition contained in subsection (a) shall not apply to or restrict any business, act, or commerce relating to the growing or processing of industrial hemp otherwise authorized by state or federal law, whether authorized by Chapter 17.38 or any other provision of state or federal law; nor shall the prohibition contained in subsection (a) preclude issuance of a license or registration required for industrial hemp-related business or commerce to a qualified person or entity.

Section 3. Effective date. If a majority vote favors this ordinance, it shall become effective upon certification of the election.

PROPOSED SUMMARY OF INITIATIVE:

This initiative proposes to amend Matanuska-Susitna Borough Code by adding Chapter 8.22 Marijuana License Referrals to Title 8 Health and Welfare. If adopted, marijuana businesses except those involving industrial hemp will be prohibited in the Matanuska-Susitna Borough in areas *outside* of established cities (Houston, Palmer, and Wasilla). Personal marijuana use and industrial hemp are unaffected by the initiative.

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MAY 22 2015  
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MAY 22 2015

CLERKS OFFICE

AN APPLICATION FOR BALLOT INITIATIVE TO PROHIBIT MARIJUANA BUSINESSES EXCEPT THOSE INVOLVING INDUSTRIAL HEMP IN THE MATANUSKA-SUSITNA BOROUGH

The following registered voters of the Mat-Su Borough Sponsor this Initiative:

Signature	Printed Name	Residence Address	Mailing Address (Check if same)
<i>[Signature]</i>	Christopher R Miller	4028 N Snaugouse Rd Palmer AK 99645	
<i>[Signature]</i>	Barry Orzelli	1561 South Beaver Lake Rd Wasilla, AK 99623	
<i>[Signature]</i>	Ted Franke	5381 E. Pine St. Wasilla, AK 99654	
<i>[Signature]</i>	Robert Hunner	525 School St. Wasilla, AK 99654	same
<i>[Signature]</i>	Stephan D. Hisinger (STEPHAN D. HISINGER)	2850 SWEETSHOE LN WASILLA, AK 99654	
<i>[Signature]</i>	Paul Riley	7851 South Shore Drive P.O. Box 870 127 Wasilla AK 99607	
<i>[Signature]</i>	Gunnar Hultman	3040 N. Delos St Wasilla, AK 99654	
<i>[Signature]</i>	Paul Steiner	3060 Lazy Eight Ct Ste 2 Wasilla, AK 99654	
<i>[Signature]</i>	Paul Steiner	16734 E Center St Palmer, AK 99645	PO Box 4250 Palmer, AK 99645
<i>[Signature]</i>	Bob Lee	1500 E ROBIN Ln. PALMER, AK 99645	SAME
<i>[Signature]</i>	Philip Markwart	3641 Parkin Circle Palmer, AK 99645	same
<i>[Signature]</i>	Rudy Boglitsch	7180 E. Train Lakes Dr. Wasilla, AK 99654	Same
<i>[Signature]</i>	Timothy R. Siegie	5756 S. Sunk Valley Dr Palmer, AK 99645	SAME
<i>[Signature]</i>	Daniel Korman	5616 Reynolds Road Palmer, AK 99645	same
<i>[Signature]</i>	SALLY M. POLLEN	3000 PENNY Ln. Palmer, AK 99645	Same

AN APPLICATION FOR BALLOT INITIATIVE TO PROHIBIT MARIJUANA BUSINESSES  
EXCEPT THOSE INVOLVING INDUSTRIAL HEMP IN THE MATANUSKA-SUSITNA  
BOROUGH

All correspondence relating to this application should be sent to:

**Principal Sponsor:**

Name: Daniel Hamm  
Mailing Address: 8661 E Regents Road  
Home Phone: 907-745-4305  
Cell Phone: 858-366-5373  
Email Address: daniel\_hamm@hotmail.com

**Secondary Sponsor:**

Name: SALLY M POLLEN  
Mailing Address: 2000 Penny Ln. Palmer  
Home Phone: 907 745-8920  
Cell Phone: NONE  
Email Address: Sallymac@ak.net

RECEIVED

MAY 22 2015

CLERKS OFFICE

Application received in the Borough Clerk's  
Office this \_\_\_\_\_ day of May, 2015

\_\_\_\_\_  
Borough Clerk's Office Representative

Application certified this \_\_\_\_\_ day of  
\_\_\_\_\_, 2015.

\_\_\_\_\_  
Borough Clerk - Lonnie R. McKechnie

CODE ORDINANCE

Application for Petition Filed: 05/22/15  
Petition Issued: 06/09/15  
Petition Certified: 09/25/15

MATANUSKA-SUSITNA BOROUGH  
ORDINANCE SERIAL NO. 15-088

AN INITIATIVE ORDINANCE OF THE VOTERS OF THE MATANUSKA-SUSITNA BOROUGH AMENDING TITLE 8, BY ADOPTING A NEW CHAPTER, 8.22 MARIJUANA LICENSE REFERRALS, PROHIBITING MARIJUANA BUSINESSES EXCEPT THOSE INVOLVING INDUSTRIAL HEMP.

---

WHEREAS, the residents of Alaska passed Ballot Measure No. 2 - 13PSUM An Act to Tax and Regulate the Production, Sale, and Use of Marijuana, codified as Alaska Statute Chapter 17.38; and

WHEREAS, the Ballot Measure creates classes of registrations, licenses, or permits to enable the lawful conduct of certain types of marijuana commerce and business; and

WHEREAS, the conduct of these commercial and business activities is unlawful without the appropriate registration, license, or permit; and

WHEREAS, AS 17.38.100 Local Control, enacted by Ballot Measure 2, empowers municipalities to prohibit the operation of these businesses by enactment of an ordinance or voter initiative; and

WHEREAS, prohibiting the operation of commercial marijuana businesses does not infringe upon the personal use rights guaranteed by Ballot Measure 2; and

WHEREAS, the voters do not seek to inhibit the development of industrial hemp.

THEREFORE, BY VOTER INITIATIVE, BE IT ENACTED:

Section 1. This ordinance is of a general and permanent nature and shall become a part of the Matanuska-Susitna Borough code.

Section 2. Adoption of chapter. MSR 8.22 is hereby adopted as follows:

8.22 Marijuana License Referrals

8.22.010 Definitions

8.22.020 Marijuana businesses prohibited

8.22.010 Definitions

(A) As used in this chapter, the words shall have meanings as follows:

- "Industrial hemp" means the plant *Cannabis sativa* and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis and shall also include any definition of "industrial hemp," or similar term serving the same purpose, adopted by laws or regulations by the State of Alaska.

- "Marijuana business" means any and all business, acts, or commerce subject to registration or licensure pursuant to Alaska Statute Chapter 17.38.

8.22.020 Marijuana businesses prohibited

(A) Marijuana businesses are prohibited in the borough in the areas outside of cities.

(B) The prohibition contained in section (A) shall not apply to or restrict any business, act, or commerce relating to the growing or processing of industrial hemp otherwise authorized by state or federal law, whether authorized by Chapter 17.38 or any other provision of state or federal law; nor shall the prohibition contained in section (A) preclude issuance of a license or registration required for industrial hemp-related business or commerce to a qualified person or entity.

Section 3. Effective date. If a majority vote favors this ordinance, it shall become effective upon certification of the election.

[http://www.frontiersman.com/news/initiative-would-prohibit-marijuana-businesses/article\\_b9a735ec-0748-11e5-a821-e79527588a21.html](http://www.frontiersman.com/news/initiative-would-prohibit-marijuana-businesses/article_b9a735ec-0748-11e5-a821-e79527588a21.html)



PREVIOUS



Annual Doggy Day a hit at Regine facility



NEXT UP



Usibelli sits tight

Healy company official addresses Wasilla chamber meeting<...

Pot ban on the ballot?

## Initiative would prohibit marijuana businesses

Brian O'Connor May 30, 2015





PALMER — Two draft ballot measures presently under review by the city of Palmer and Mat-Su Borough would ban most marijuana businesses, if voters approve.

The identically worded measures would exempt businesses dealing with industrial hemp, but would outlaw parlors, cafes, commercial grow operations for recreational uses, or any other forms of business trading in the drug, at least as they appeared in copies provided by the respective municipal clerks.

The primary sponsor of the Palmer initiative, Donna Irsik, said Friday the city measure had been rejected by the city clerk and would need to be reworded. Irsik said she was waiting to see the precise nature of the changes required before commenting in detail. The borough-level initiative is still under legal review.

The borough measure does not assert the business ban as an area-wide power, meaning the borough's three incorporated cities would be able to choose their own destiny on the marijuana question. Clerks in Wasilla and Houston said they had not received similar measures.

One of the motivating forces behind both ballot measures is Borough Mayor Larry DeVilbiss, who is running for re-election this fall, but says he is not campaigning on the issue.

He said he supported both measures in an effort — at least in part — to clarify the will of voters.

"It's timely," DeVilbiss said. "A year from now, people will be totally invested in commercialization. When (the ballot measure) passed, it passed with three powers that came with it: the power to tax, the power to regulate, and the power to opt out."

The proposed local initiatives would exercise that third power, he said.

He pointed to interest in investment locally as an example of the need for clarity from local voters.

"I talked to an investor just a few days ago from Anchorage that wants to invest out here, and I pointed out to him that this is a voting environment that was actually negative on Ballot Measure 2," DeVilbiss said. "To put a big investment into that without knowing how the voters stood on it, or having that opt-out power hanging over their heads, is not something I would advise."

By the numbers, voters in the unincorporated areas of the borough and in Wasilla rejected the November 2014 proposition legalizing marijuana. And voters in Palmer narrowly approved the measure, while Houston voters supported the measure by wide margins.

DeVilbiss had sought approval from the borough assembly for an advisory vote in support of a ballot measure, but assembly members unanimously rejected the measure earlier this year.

Among the more vocal critics of that measure was Assemblyman Jim Sykes, who said a local ballot measure would essentially be a repeat of the vote on the statewide Ballot Measure 2.

"I think some people may be trying to make the political point that the borough vote was slightly less than half, which is true. But there were some precincts that did vote in favor for it," Sykes said. "So what are we going to do, take it down to the next level and do neighborhoods?"

The principal sponsor of the borough measure is Daniel Hamm, who did not respond to phone calls seeking comment. The secondary sponsor, Sally Pollen, said she opposed open commercialization because it attracted “the criminal element.”

“I don’t think the leaders of our boroughs or counties or state should be sanctioning further criminal activity,” she said.

Pressed whether she thought there were any benefits, Pollen was terse.

“Of course, for the pot smokers and the potheads, it would be wonderful for them to gather in smokehouses and such and be able to sell it and commercialize it and everything,” she said.

Pollen conceded possible medical benefit, but said the measure doesn’t address medical use.

“I just don’t think leadership in municipalities or state governments should be sanctioning something that is a known detriment to the people, be it alcohol or marijuana,” she said.

In Palmer, the ballot initiative process begins with an application requiring 10 voter signatures, according to municipal code. Once the application is satisfactorily completed, the clerk then certifies the initiative according to four criteria.

Once a potential initiative is certified, supporters have 90 days to collect resident signatures equal to 25 percent of the total voter turnout from the previous election. The city council has a chance, 20 days prior to the election, to pass an ordinance effectively matching the petition and turning it into code. If the council elects not to, the measure heads to the ballot.

The borough process conforms to state law, which says that upon certification by the clerk, supporters have 90 days to collect a number of signatures equal to at least 15 percent of the total votes cast in the 2014 election.

The deadline for the borough assembly to pass legislation adding a proposition or question on the ballot is Aug. 4.

Contact Brian O'Connor at 352-2269, [brian.oconnor@frontiersman.com](mailto:brian.oconnor@frontiersman.com), or on Twitter @reporterbriano.

Brian O'Connor

## Archives

Archives Select Month

### Two questions to appear on Mat-Su ballot

by Phillip Manning ~ August 10th, 2015

In October, voters in the Mat-Su Borough will choose their mayor, three assembly members, and three school board members. They will also vote on two ballot questions that could change how elections work in the future. They will not, however, be voting on banning commercial marijuana in the borough.

Borough Clerk Lonnie McKechnie (mik-KEK-nee) says petitions to change the election date and create districts for school board seats received the requisite number of signatures by the August 4<sup>th</sup> deadline to appear on this year's ballot. The election date initiative would change the current October date for borough elections to line up with state and federal elections, on the first Tuesday after a Monday that falls in November. The other initiative would create districts for school board members to align with assembly districts. Currently, all school board members are elected at-large, and may live anywhere in the borough.

One petition that did not receive its requisite signatures would place the issue of commercial marijuana on the borough ballot. While personal recreational use and limited cultivation of marijuana is currently allowed after a statewide vote last year, municipalities may decide whether to allow marijuana businesses within their boundaries. Because it started later, the marijuana petition has until early September to achieve its required number of signatures. If that happens, it will either appear on next year's borough ballot unless the assembly calls a special election.

The borough election will be held on October 6<sup>th</sup>.

« [Susitna Writer's Voice—"Lost!"](#), part one, from [Open to Entry, An Alaskan Adventure](#), by [Kris Drumm](#)  
[Talkeetna sewer system exceeds permit limits in July, but borough says progress is being made](#) »

Comments are closed.

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# Mat-Su takes up pot codes

By Ellen Lockyer, Alaska Public Media - February 3, 2016

A Matanuska-Susitna Borough marijuana ordinance had its first reading before the Borough Assembly Tuesday night. But even if the ordinance gains approval, it may be overshadowed by a future Borough election.

A seventeen member Borough committee worked to write the legislation, [ordinance 16-003] which regulates retail marijuana sales in the Borough. The ordinance defines marijuana, marijuana retail and commercial growing operations, standards of operations and permitting.

The Assembly took no action on the legislation on Tuesday, but heard an unusual request from former Borough mayor Larry DeVilbiss.

"I'd like to remind you that there is a voter initiative on the ballot this fall. And I'd like you to consider to hold permits on commercial marijuana until after that election." DeVilbiss said during the audience participation portion of the meeting.

A Borough voter initiative on retail marijuana is scheduled for the Borough's October ballot. DeVilbiss told the Assembly that Borough voters need to weigh in on commercial sales, as have voters in city elections in the three cities within the Borough. And he predicted that the October vote this time could have a different outcome than the recreational marijuana initiative on the 2014 state ballot.

"It's a very different question from Ballot Measure Two. You are moving from the privacy and the very limited quantities of personal use out on to main street with totally unlimited quantities."

DeVilbiss sponsored the city legislation banning pot sales in Palmer that gained approval there last year. Ironically, voters in Palmer approved Ballot Measure Two in 2014.

Borough Assemblyman Jim Sykes calls DeVilbiss' request "surprising".

"It was he who actually started the whole process rolling. I wrote the legislation to create the committee, and he appointed everybody on it. I think that people are very well aware, and anyone who applies for a permit will be aware that a permit could be rescinded if the public vote goes the way the former mayor predicts it."

Sykes says the point of the Borough's legislation is to ensure that Borough codes are in line with state statutes and to have Borough regulations in place before the state begins accepting permit applications in April.

Sarah Williams, chair of the Borough's Marijuana Advisory Board, said Borough permits should be issued before October, since businesses would likely accept the risk of a voter ban on retail sales.

"So, holding permits until election, is not necessarily the best way to go. As a business owner, they need to make awareness to themselves as 'hey, do I want to take that risk or not.' Our industry is already mobilizing, and we will be educating the public."

Of the cities within the Borough, Wasilla and Palmer have banned commercial marijuana operations within city limits, while Houston has approved them. The Mat Su Borough Assembly will take public testimony on the Borough's pot retail regulations ordinance on March 1.

### **Ellen Lockyer, Alaska Public Media**

*<http://www.alaskapublic.org/aprm>*

APTI Reporter-Producer Ellen Lockyer started her radio career in the late 1980s, after a stint at bush Alaska weekly newspapers, the Copper Valley Views and the Cordova Times. When the Exxon Valdez ran aground in Prince William Sound, Valdez Public Radio station KCHU needed a reporter, and Ellen picked up the microphone. Since then, she has literally traveled the length of the state, from Attu to Eagle and from Barrow to Juneau, covering Alaska stories on the ground for the AK

show, Alaska News Nightly, the Alaska Morning News and for Anchorage public radio station, KSKA  
elockyer (at) alaskapublic (dot) org | 907.550.8446 | About Ellen

NON-CODE ORDINANCE

Sponsored By: Assemblymembers  
Kowalke and Sykes

Introduced: 04/19/16

Public Hearing: 05/03/16

Amended: 05/03/16

Adopted: 05/03/16

Reconsideration Filed: 05/04/16

Reconsideration Passed: 05/17/16

Amended: 05/17/16

Adopted: 05/17/16

**MATANUSKA-SUSITNA BOROUGH  
ORDINANCE SERIAL NO. 16-046**

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY  
ESTABLISHING A TEMPORARY MORATORIUM ON MARIJUANA ESTABLISHMENTS  
TO EXPIRE ON OCTOBER 19, 2016.

---

WHEREAS, AS 17.38.900 defines "marijuana establishment" to include marijuana cultivation facilities, marijuana testing facilities, marijuana product manufacturing facilities, and marijuana retail stores; and

WHEREAS, the Marijuana Control Board has also addressed marijuana clubs which allow consumption of marijuana on premises and which the Matanuska-Susitna Borough considered included in the definition of marijuana establishments; and

WHEREAS, AS 17.38.110 allows municipalities to limit or prohibit operation of marijuana establishments; and

WHEREAS, at the October 4, 2106 regular election, Matanuska-Susitna Borough voters will decide whether to prohibit all marijuana establishments except industrial hemp; and

WHEREAS, the Matanuska-Susitna Borough has not yet established local rules regarding the operations of marijuana establishments; and

WHEREAS, it is in the public interest that the Matanuska-Susitna Borough Assembly thoughtfully consider and adopt rules and regulations that ensure the orderly development and regulation of marijuana establishments; and

WHEREAS, implementation dates of State of Alaska licensing rules are still unknown and public concern has been raised about enacting Borough regulations prior to consideration of a marijuana ballot initiative on October 4, 2016, and

WHEREAS, it is also in the best interest of the Matanuska-Susitna Borough to establish a moratorium until issues regarding locations of businesses and residential areas is more fully addressed; and

WHEREAS, state law on licensing requires background checks which has not yet been signed into law or taken effect; and

WHEREAS, no matter how voters decide the October 4, 2016 ballot question on marijuana, local rules will still be needed to regulate marijuana establishments; and

WHEREAS, nothing in this ordinance infringes on the personal use rights guaranteed by AS 17.38; and

WHEREAS, this moratorium is temporary in nature and expires the day after the certification date for the results of the October 4, 2016 regular borough election.

BE IT ENACTED:

Section 1. Classification and Applicability. This Ordinance is a non-code ordinance and applies to all areas of the Matanuska-Susitna Borough outside the incorporated cities of Palmer, Wasilla and Houston.

Section 2. Moratorium. As per the authority granted by AS 17.38.110, the Matanuska-Susitna Borough establishes a moratorium and prohibits: 1) the processing of applications for approval of marijuana establishments; and 2) operation of marijuana establishments.

Section 3. Definitions. In this ordinance, "marijuana establishment" is defined as per AS 17.38.900 and further includes all forms of commercial marijuana activity and marijuana clubs whatever their nature.

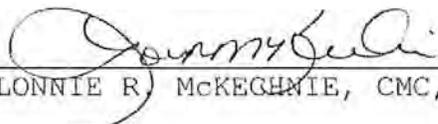
Section 4. Effective Date. This ordinance shall take effect upon adoption.

Section 5. Sunset Clause. This ordinance shall expire October 19, 2016.

ADOPTED by the Matanuska-Susitna Borough Assembly this  
17 day of May, 2016.

  
VERN HALTER, Borough Mayor

ATTEST:

  
LONNIE R. McKECHNIE, CMC, Borough Clerk  
(SEAL)

05/17/16 Vote:

PASSED UNANIMOUSLY: Sykes, Beck, McKee, Colligan, Mayfield and  
Kowalke

Reconsideration Vote:

PASSED UNANIMOUSLY: Sykes, Beck, McKee, Colligan, Mayfield and  
Kowalke

05/03/16 Vote:

PASSED UNANIMOUSLY: Sykes, Beck, McKee, Colligan, Mayfield,  
Doty, and Kowalke

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

RECEIVED in the TRIAL COURTS  
State of Alaska Third District  
at Palmer

SEP 19 2016

Clerk of the Trial Courts

By \_\_\_\_\_ Deputy

THOMAS HANNAM, et al. )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 MATANUSKA-SUSITNA BOROUGH, )  
 et al. )  
 )  
 Defendants. )

Case No. 3PA-16-01952 CI

STATE OF ALASKA )  
 ) ss.  
 THIRD JUDICIAL DISTRICT )

AFFIDAVIT OF BRENDA HENRY  
IN SUPPORT OF  
MATANUSKA-SUSITNA BOROUGH'S OPPOSITION TO REQUEST  
FOR PRELIMINARY AND PERMANENT INJUNCTION  
(LATCHES)

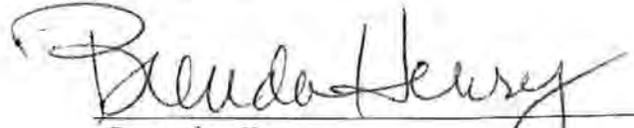
Brenda Henry, being first duly sworn upon oath or affirmation, deposes and states as follows:

1. I am the Assistant Clerk for the Matanuska-Susitna Borough ("Borough").
2. I have personal knowledge of the facts contained herein.
3. I verified that a copy of proposed Initiative Ordinance 15-088 was loaded to the Borough's website on February 10, 2016.
4. I provided a paper copy of proposed Initiative Ordinance 15-088 to all members of the Borough's Marijuana Advisory Committee at their meeting on February 29, 2016.

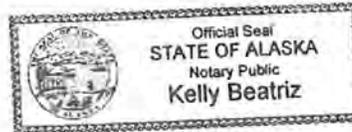
BOROUGH ATTORNEY'S OFFICE  
Matanuska-Susitna Borough  
350 East Dahlia  
Palmer, Alaska 99645  
(907) 861-8677  
FAX: (907) 861-8559

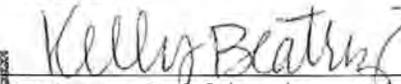
5. Rhonda Marcy was a member of the Borough's Marijuana Advisory Committee and was present at the meeting on February 29, 2016.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

  
Brenda Henry  
Assistant Borough Clerk  
Matanuska-Susitna Borough

SUBSCRIBED and SWORN or affirmed to before me this 19<sup>th</sup> day of September, 2016, in Palmer, Alaska.



  
Notary Public in and for the  
State of Alaska  
My Commission Expires: 3/8/2020

BOROUGH ATTORNEY'S OFFICE  
Matanuska-Susitna Borough  
350 East Dahlia  
Palmer, Alaska 99645  
(907) 861-8677  
FAX: (907) 861-8559

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

RECEIVED in the TRIAL COURTS  
State of Alaska Third District  
at Palmer

THOMAS HANNAM, et al. )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 MATANUSKA-SUSITNA BOROUGH, )  
 et al. )  
 )  
 Defendants. )

SEP 19 2016  
Clerk of the Trial Courts  
By \_\_\_\_\_ Deputy

Case No. 3PA-16-01952 CI

ORDER ON REQUEST FOR PRELIMINARY AND PERMANENT INJUNCTION  
(LATCHES)

THIS CAUSE coming to be heard on plaintiffs' Request for Preliminary and Permanent Injunction, and responses thereto, the Court being fully advised in the premises:

THE COURT FINDS

1. The plaintiffs have requested preliminary and permanent injunctive relief as follows:
  1. To prevent the zoning initiative from being placed before the voters;
  2. To have the zoning initiative removed from the Ballot; and
  3. To prevent any votes from being counted on the zoning initiative, in the event that it is voted on, until after this matter is resolved.
2. On May 22, 2015 the Matanuska-Susitna Borough received an application for an initiative petition titled "Application for Ballot Initiative to Prohibit Marijuana Businesses Except Those Involving Industrial Hemp in the Matanuska-Susitna Borough."
3. The Borough Clerk certified the application and prepared signature books for sponsors to circulate as per AS 29.26.120.

BOROUGH ATTORNEY'S OFFICE  
Matanuska-Susitna Borough  
350 East Dahlia  
Palmer, Alaska 99645  
(907) 861-8677  
FAX: (907) 861-8559

4. On September 25, 2015, the Borough Clerk certified the petition. The proposed Initiative Ordinance was assigned a number 15-088.
5. Certification of proposed Initiative Ordinance was less than 75 days before the 2015 election and it was held over to the next Borough election which is the 2016 regular Borough election.
6. The 2016 regular Borough election date is October 4, 2016.
7. The Plaintiffs have been raising claims to the Borough Assembly for months that Initiative Ordinance 15-088 is illegal.
8. Plaintiffs allege the controversy became live on May 2, 2016.
9. At a minimum, news articles about the impending Initiative Ordinance were published on May 30, 2015, August 10, 2015 and February 3, 2016.
10. Plaintiff Rhonda Marcy was informed of proposed Initiative Ordinance 15-088 via paper copy on February 29, 2016.
11. Plaintiffs waited until approximately 4 weeks before the election to file suit.
12. On August 25, 2016 the Borough took possession of approximately 69,875 ballots for the upcoming Borough regular election with the Initiative Ordinance on them.
13. There are 41 precincts in the Borough and 7 different ballot types for the 2016 Borough regular election.
14. The Borough uses Accuvote machines to tabulate ballot results.
15. Specific machines are calibrated via programmed memory cards to specific ballot types and this is critical to the accurate tabulation of all questions appearing on the ballot.
16. On September 8, 2016, the Borough tested and verified the accuracy of the Accuvote memory cards for the ballots.
17. Upon successful completion of the tests, memory cards were locked into the machines.

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18. On September 15, 2016 approximately four hundred sixty eight (468) absentee-by-mail ballots were mailed to voters in the Borough.
19. On September 19, 2016, absentee-in-person voting commenced.
20. On September 30 through October 1, 2016, voting materials will be distributed to 41 different precinct voting officials.
21. Preparations for the 2106 Borough regular election are complete and voting is already occurring.
22. To reprogram memory cards in order to not count the results of Initiative Ordinance 15-088, it would necessitate:
  - 1) breaking the locks on the machines;
  - 2) removing the memory cards;
  - 3) sending them to the programmer in Omaha, NE, with instructions to re-program the cards to not count that one question on the 7 different ballot types;
  - 4) waiting for the cards to be returned;
  - 5) upon their return, testing the cards against the specific ballot types to ensure accuracy;
  - 6) locking them into the machines;
  - 7) distributing the machines to the precinct Chairperson for all 41 precincts.

THE COURT CONCLUDES:

The equities of this case justify refusal to hear the issue of the requested injunctive relief. There was general public knowledge of the election on the Initiative Ordinance on or before May 3, 2016 - the date at which the plaintiffs allege the present controversy arose. In addition, plaintiff Rhonda Marcy was specifically informed of the proposed Initiative Ordinance on February 29, 2016. On the face of their complaint, Plaintiffs had specific and individualized notice that Initiative Ordinance 15-088 would appear on the October ballot. Yet, plaintiffs waited until approximately 4 weeks before the election to file suit.

It is literally impossible to remove the Initiative Ordinance from the ballot because voting has started. In addition, given the complexity of ballot preparation, programming cards and the preciseness and accuracy which this demands, any attempt to change the programming of cards (already calibrated and locked

into the machines) risks disrupting the other ballot questions and races on the current ballot.

Had the case been filed earlier in time, the relief sought would have been available. There is no justification for delay and no circumstances which would have obstructed plaintiffs' diligence in bringing this complaint. It is the delay in bringing the claims and resulting prejudice to the orderly election process which prevents the Court from considering the requested injunctive relief.

IT IS THEREFORE ORDERED the Court hereby DISMISSES the claims for injunctive relief WITH PREJUDICE under the doctrine of Latches and will not consider that grant of relief.

DATED AND SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2016, at  
Palmer, Alaska.

\_\_\_\_\_  
Superior Court Judge

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

RECEIVED In the TRIAL COURTS  
of Alaska Third District  
at Palmer

SEP 19 2016

Clerk of the Trial Courts  
By \_\_\_\_\_ Deputy

THOMAS HANNAM, et al. )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 MATANUSKA-SUSITNA BOROUGH, )  
 et al. )  
 )  
 Defendants. )

Case No. 3PA-16-01952 CI

REQUEST FOR EXPEDITED ORAL ARGUMENT ON PLAINTIFFS' REQUEST  
FOR PRELIMINARY AND PERMANENT INJUNCTION  
AND OPPOSITION BASED ON LATCHES

COMES NOW, the Matanuska-Susitna Borough, by and through counsel at the Borough Attorney's Office, and hereby requests expedited oral argument on the Plaintiffs' Request for Preliminary and Permanent Injunction and the Borough's Opposition based upon Latches.

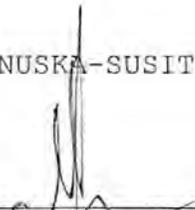
Expedited Consideration has already been granted in this matter, therefore, the Borough requests Expedited Oral Argument as to these matters as well.

As noted in the opposition to the request for injunctive relief based on latches, absentee voting is already occurring and poll voting occurs on October 4, 2016. This matter should be immediately addressed to ensure a systematic and orderly election as to all questions appearing on the ballot.

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DATED this 19th day of September, 2016, in Palmer, Alaska.

MATANUSKA-SUSITNA BOROUGH

By: 

Nicholas Spiropoulos  
Borough Attorney  
Alaska Bar No. 0010068

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

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By \_\_\_\_\_ Deputy

THOMAS HANNAM, et al. )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 MATANUSKA-SUSITNA BOROUGH, )  
 et al. )  
 )  
 Defendants. )

Case No. 3PA-16-01952 CI

ORDER GRANTING EXPEDITED CONSIDERATION AS TO PLAINTIFFS' REQUEST  
FOR PRELIMINARY AND PERMANENT INJUNCTION  
AND OPPOSITION BASED ON LATCHES

The Court, having received the Borough's Request for Expedited Oral Argument;

IT IS HEREBY ORDERED that the request is GRANTED.

Any opposition to the merits of the Borough's motion based on latches is due on the \_\_\_\_ day of \_\_\_\_\_, 2016.

Expedited oral argument is set before the undersigned on the \_\_\_\_ day of \_\_\_\_\_, 2016, at \_\_\_\_ .m. in Courtroom \_\_\_\_.

DATED AND SIGNED this \_\_\_\_ day of \_\_\_\_\_, 2016 at Palmer, Alaska.

\_\_\_\_\_  
Superior Court Judge

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THIRD JUDICIAL DISTRICT AT PALMER

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SEP 19 2016

Clerk of the Trial Courts  
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Case No. 3PA-16-01952 CI

CERTIFICATE OF SERVICE

I, Kelly Beatriz, hereby certify that on the 19th day of September, 2016, I caused to be served, via U.S. Mail, postage prepaid, a copy of *Matanuska-Susitna Borough's Opposition to Request for Preliminary and Permanent Injunction (Latches), Affidavit of Lonnie McKechnie in Support of Matanuska-Susitna Borough's Opposition to Request for Preliminary and Permanent Injunction (Latches) (with Exhibits A-F), Affidavit of Brenda Henry in Support of Matanuska-Susitna Borough's Opposition to Request for Preliminary and Permanent Injunction (Latches), Order on Request for Preliminary and Permanent Injunction (Latches), Request for Expedited Oral Argument (Latches) and Order Granting Expedited Oral Argument (Latches)* on the following:

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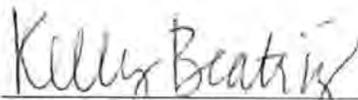
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