

**NORTHWEST ARCTIC BOROUGH ASSEMBLY
ORDINANCE 18-05**

**AN ORDINANCE OF THE NORTHWEST ARCTIC BOROUGH
ASSEMBLY AMENDING TITLE SEVEN OF THE BOROUGH CODE TO
ADOPT A MARIJUANA EXCISE TAX AND FOR RELATED PURPOSES.**

WHEREAS: the Borough Assembly wishes to adopt Chapter 7.14 of the Borough Code to levy an excise tax on marijuana; and

WHEREAS: although there are currently no licensed marijuana establishments in the Borough, the Assembly wishes to adopt a marijuana excise tax in an effort to be proactive and establish a taxation regime for the burgeoning industry; and

WHEREAS: the Assembly has determined that it is in the Borough's best interest to enact a marijuana excise tax.

**NOW THEREFORE BE IT ENACTED BY THE NORTHWEST
ARCTIC BOROUGH ASSEMBLY:**

Section 1: Chapter 7.14 of the Borough Code is adopted as follows:

MARIJUANA EXCISE TAX

Sections:

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<u>7.14.110</u>	Tax lien – Interest and penalties.
<u>7.14.120</u>	Penalty violation.

7.14.010 Scope.

Unless provided otherwise, this chapter establishes taxation of all marijuana and marijuana products brought into or acquired in the Borough for commercial use; cultivation of marijuana in the Borough for commercial use; and manufacture of marijuana products in the Borough for commercial use.

7.14.020 Definitions.

In this chapter:

- A. "Borough" means the Northwest Arctic Borough.
- B. "Brought into or acquired" includes all manners, ways, and modes of bringing into, obtaining, cultivating, or creating marijuana or marijuana products in the borough, including the transfer, sale, or exchange of marijuana, with or without consideration, or by barter, between marijuana establishments, or within marijuana establishments possessing multiple permits, for commercial purposes.
- C. "Bud and flower" means the hairy, sticky, or crystal-covered parts of mature female marijuana plants generally harvested for their high potency content.
- D. "Department" means the Northwest Arctic Borough Finance Department.
- E. "Marijuana" means all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, 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 which 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" is also defined to include "marijuana products."

F. “Marijuana cultivation facility” means an entity registered to cultivate, prepare, and package marijuana and to sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

G. “Marijuana establishment” means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, or a retail marijuana store.

H. “Marijuana product manufacturing facility” means an entity registered to purchase marijuana; manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

I. “Marijuana products” means concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.

J. “Marijuana testing facility” means an entity registered to analyze and certify the safety and potency of marijuana.

K. “Person” means any individual, trust, estate, partnership, corporation, joint venture, entity, or group or combination of these acting as a unit.

L. “Retail marijuana store” means an entity registered to purchase marijuana from marijuana cultivation facilities, to purchase marijuana and marijuana products from marijuana product manufacturing facilities, and to sell marijuana and marijuana products to consumers.

M. “Sale” means a sale, barter, exchange, and every other manner of transferring the ownership of personal property for consideration.

N. "Transfer" means the exchange of marijuana, with or without consideration, or by barter, between marijuana establishments, or within marijuana establishments possessing multiple permits, for commercial purposes.

7.14.030 Excise tax on marijuana.

A. The borough hereby levies an excise tax on all marijuana brought into or acquired in the Borough for commercial purposes as follows:

1. Any part of the bud and flower will be taxed at \$25.00 per ounce.
2. The remainder of the plant, not included in subsection (A)(1) of this section, will be taxed at \$10.00 per ounce.
3. Marijuana products will be taxed at \$15.00 per ounce.

B. The Borough hereby levies an excise tax upon the transfer of all marijuana cultivated in the Borough for commercial purposes and on the transfer of all marijuana products manufactured in the Borough for commercial purposes as follows:

1. Any part of the bud and flower will be taxed at \$25.00 per ounce.
2. The remainder of the plant, not included in subsection (B)(1) of this section, will be taxed at \$10.00 per ounce.
3. Marijuana products will be taxed at \$15.00 per ounce.

C. A marijuana cultivation facility that is also licensed as a marijuana product manufacturing facility must pay tax on all marijuana transferred from the cultivation facility to the product manufacturing facility for the quarter in which the marijuana was transferred.

D. A marijuana cultivation facility that is also licensed as a retail marijuana store must pay tax on all marijuana transferred from the cultivation facility to the retail marijuana store for the quarter in which the marijuana was transferred.

E. It is the intent and purpose of this chapter to provide for the collection of the excise tax from: (1) any person who brings marijuana into or acquires marijuana in the borough for retail sale or use at a marijuana product manufacturing facility; or (2) a marijuana cultivation facility or marijuana product manufacturing facility upon

transfer. The excise tax does not apply to a marijuana retail store unless it directly brings marijuana or other marijuana products into the borough for sale.

7.14.040 Exemptions.

- A. The tax imposed under this chapter does not apply to marijuana if the state of Alaska prohibits the levying of this tax under AS 17.38.
- B. Transfers to a licensed marijuana testing facility are exempt from the excise tax on marijuana.

7.14.050 Credit for local marijuana excise tax paid.

- A. Credit is allowed for a marijuana excise tax that was paid to a municipality within the borough; provided, however, the amount of such credit shall be limited to fifty percent of the tax paid to the local municipality for its marijuana excise tax.

7.14.060 Registration Required.

- A. No person may sell, purchase, possess, or bring marijuana into the borough for commercial purposes without first registering with the borough. The registration shall be on a form provided by the department and must include the information requested by the department.
- B. The registration required by this chapter is in addition to any other registration or license required by law.
- C. A marijuana establishment that operates within the borough and without being registered to do so will be personally liable for the excise tax, plus a penalty of 100 percent of the tax due.

7.14.070 Quarterly tax returns – Penalties and interest for delinquency.

- A. Every marijuana establishment must, on or before the last day of the month succeeding the end of each quarter year ending March 31st, June 30th, September 30th and December 31st, complete a marijuana excise tax return for the preceding quarter year upon forms to be furnished by the borough, and sign and transmit the tax return to the department. The return must include, for that preceding quarter, a total count of the number of ounces of marijuana or marijuana product received into the

Borough, cultivated in the Borough, or manufactured in the Borough, along with the amount of tax exemption or credit, and the total excise tax due, and such other information and supporting documentation as the Borough may require.

B. Failure to Pay Penalty. A penalty of six percent of the taxes due shall be incurred automatically when a person fails to pay the full amount of the tax due under this chapter within seven calendar days following its due date. If a person fails to pay the full amount of the tax due within 16 calendar days after its due date, the six percent penalty for failure to pay shall be increased automatically to 15 percent.

C. Failure to File Penalty. A penalty of six percent of the taxes due shall be incurred automatically when a person fails to file a tax return or report within seven calendar days following its due date under this chapter. If a person fails to file the tax return or report within 16 calendar days after its due date, the six percent penalty for failure to file shall be increased automatically to 15 percent.

D. For all penalties incurred:

1. The penalties shall be computed on the unpaid balance of the tax liability as determined by the department.

2. Notice of the penalties incurred and to be incurred shall be given to the person responsible for payment of the taxes or for filing the tax return or report when such tax payment or tax return or report is delinquent for seven calendar days after its due date.

3. The penalties provided for in this section shall be in addition to all other penalties and interest provided for under this chapter.

4. If a properly filed amended tax return reduces the total tax liability or the tax required to be paid, or the department reduces the tax liability, the related penalty will be reduced accordingly.

5. All penalties and remedies enumerated in this chapter are cumulative.

E. In addition to any penalties imposed by this chapter, interest at the rate of 12 percent per annum shall be charged on the unpaid balance of delinquent taxes.

7.14.080 Delinquency – Failure to submit tax return or remit taxes.

A. Whenever the department reasonably believes that a tax return contains inaccurate reporting or whenever any marijuana establishment has become delinquent in the submission of its required quarterly tax return or in remitting the excise tax, the department shall mail to the delinquent marijuana establishment's last known address a written demand by certified mail, return receipt requested, for submission of the corrected or required excise tax return and remittance within 10 days. In the event of noncompliance with such demand, the department may make an excise tax assessment against the delinquent marijuana establishment, the assessment to be based on the department's estimated tax for the marijuana establishment during the quarterly period in question. A copy of the assessment shall be sent to the marijuana establishment at the marijuana establishment's last known address by certified mail, return receipt requested. The marijuana establishment will have a right to a hearing before the department at which time the marijuana establishment must make available for examination the books, papers, records, and other documents pertaining to the period involved in the assessment. The marijuana establishment may exercise the right to a hearing by delivering to the department, within 15 days of the date the notice was mailed, a written request for a hearing. The department shall establish a date and time for a hearing to be held within 10 days of receipt of the request unless a later time is mutually agreeable. The person conducting the hearing shall issue an amended assessment if it is determined that an amendment is warranted. The amended assessment, or the original assessment if no amendment is made within five days of the hearing, shall be the final assessment for the purpose of determining the marijuana establishment's tax liability to the borough. If no timely request for a hearing is made, the original assessment shall be the final assessment 30 days after the mailing of the notice of the original assessment, unless the seller has submitted an accurate tax return within the 30 days.

B. The borough may file a civil action for collection of any taxes, penalty or interest due after making a demand or assessment under subsection (A) of this section.

C. Whenever any marijuana establishment fails to submit the required quarterly tax return after notice given as provided in subsection (A) of this section, the department shall require such marijuana establishment to submit tax returns on a monthly basis.

7.14.090 Records and inspection.

To facilitate the administration and enforcement of this chapter, each marijuana establishment shall maintain and keep for a period of three years all of the quarterly excise tax returns, reports, forms, and other records prescribed by this chapter or as otherwise required by the department. The department, or the department's designee, is specifically authorized and empowered to examine and inspect the books, records and other documents of any marijuana establishment, including the marijuana establishment's state business license or licenses under AS 17.38, in order to carry out the provisions of this chapter.

7.14.100 Sale of business – Final tax return – Purchaser liability.

A. If a marijuana establishment sells, assigns, transfers, conveys, leases, forfeits, or abandons the business to another person, the marijuana establishment shall make a final excise tax return within 15 days after the date of selling, assigning, transferring, conveying, leasing, forfeiting, or abandoning the business showing that all tax obligations imposed by this chapter have been paid. The purchaser, successor, transferee, lessee, assignee, creditor, or secured party shall withhold a sufficient portion of the purchase money to pay the amount of any excise taxes, penalties, and interest that may be due and unpaid to the borough. If the purchaser, assignee, transferee, lessee, successor, creditor, or secured party fails to withhold from the purchase money, or fails to otherwise provide for or make the payment of the taxes, interest and penalty owed by the business as provided in this chapter, the purchaser, assignee, transferee, lessee, successor, creditor, or secured party shall be personally liable for the payment of the taxes, penalties, and interest accruing and unpaid to the borough on account of the operation of the business of any former owner, owners, operators, or assigns.

B. Before the sale, lease, assignment, transfer, or other disposition of the business is completed, the marijuana establishment shall file with the department an informational notice identifying the name and address of each person or entity involved in the transaction, the nature of the transaction, and the effective date of the transaction.

7.14.110 Tax lien – Interest and penalties.

The tax, interest, and penalty imposed under this chapter shall constitute a lien in favor of the borough upon the assets or property of the marijuana establishment. The lien arises upon delinquency and continues until liability for the amount is satisfied or the property of the delinquent marijuana establishment is sold at a tax lien foreclosure sale. The lien is not valid as against a mortgagee, pledge, purchaser, or judgment creditor until notice of the lien is filed in the recorder's office for the Kotzebue recording district.

7.14.120 Penalty violation.

A violation of any of the provisions of this chapter is a Class B misdemeanor.

Section 2: This Code Ordinance shall be effective immediately.

PASSED AND ADOPTED THIS 24th DAY OF APRIL 2018.



Carl Weisner, Assembly President

PASSED AND APPROVED THIS 24th DAY OF APRIL 2018.



Clement Richards, Sr., Mayor

SIGNED AND ATTESTED TO THIS 24th DAY OF APRIL 2018.



Stella Atoruk, Borough Clerk

ATTEST:

First Reading: April 3, 2018

Second Reading: April 24, 2018

