

**PETERSBURG BOROUGH
ORDINANCE #2016-11**

**AN ORDINANCE AMENDING BOROUGH CODE BY PROVIDING FOR A NEW CHAPTER
4.70 TO IMPOSE EXCISE TAXES ON THE CULTIVATION, MANUFACTURE AND
IMPORTATION OF MARIJUANA AND ANY MARIJUANA PRODUCT FOR COMMERCIAL
USE**

Section 1. Classification: This ordinance is of a permanent nature and shall be codified in the Petersburg Borough Code.

Section 2. Purpose: The purpose of this ordinance is to amend the Borough Code to implement a new Chapter 4.70 to introduce areawide excise taxes on the cultivation, manufacture and importation of marijuana and any marijuana product for commercial use within the Petersburg Borough.

Section 3. Substantive Provisions: The Petersburg Borough Municipal Code shall be amended to add a new Chapter 4.70 to read as follows:

Chapter 4.70 – Excise Taxes on the Cultivation, Manufacture and Importation of Marijuana and Any Marijuana Product for Commercial Use

Sections:

4.70.010 - Applicability of chapter.

Unless provided otherwise, this chapter shall apply to the taxation of all marijuana and marijuana products brought or transported into the Petersburg Borough for commercial use, cultivation of marijuana in the Petersburg Borough for commercial use, and manufacture of marijuana products in the Petersburg Borough for commercial use.

4.70.020 - Definitions.

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

- A. "Department" means the finance department of the Petersburg Borough.
- B. "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.
- C. "Marijuana cultivation facility" means an entity which is licensed or is required to be licensed by the State of Alaska to cultivate, prepare, store, package and label marijuana to sell to a licensed retail marijuana store, cultivation facility or product manufacturing facility.

- D. "Marijuana establishment", as used in this chapter, means either a person who receives marijuana or marijuana products brought or transported into the Petersburg Borough for commercial use, a marijuana cultivation facility located in the Petersburg Borough, or a marijuana product manufacturing facility located in the Petersburg Borough .
- E. "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.
- F. "Marijuana product manufacturing facility" means an entity which is licensed or is required to be licensed by the State of Alaska to purchase marijuana from a licensed marijuana cultivation or product manufacturing facility used to produce any marijuana product, including marijuana concentrate, for commercial use.
- G. "Person" is as defined in section 1.04.030 of this code, and is specifically intended to include individuals who are employees, members, directors, agents or officers of any of such entities who are under a duty to perform an act concerning which a violation of this chapter could occur. It is the intent of this chapter that such persons be personally liable for unremitted taxes, interest, penalties and administrative fees and costs.
- H. "Retail marijuana store" means an entity licensed by the State of Alaska 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.

4.70.030 - Imposition of excise tax on marijuana.

- A. The Petersburg Borough hereby levies an excise tax of \$25.00 per ounce on all marijuana and marijuana products brought or transported into the Petersburg Borough for commercial use inside the Petersburg Borough.
- B. The Petersburg Borough hereby levies an excise tax of \$25.00 per ounce on all marijuana cultivated in the Petersburg Borough for commercial use and on all marijuana products manufactured in the Petersburg Borough for commercial use.

4.70.040 - Intent and purpose of this chapter.

- A. It is the intent and purpose of this chapter to provide for the collection of a \$25.00 per ounce excise tax from any person who receives, for commercial purposes, marijuana or marijuana products brought or transported into the Petersburg Borough. The excise tax is levied when marijuana or any marijuana product is brought or transported into the Petersburg Borough and received by a person in the Borough for commercial purposes.
- B. It is the further intent and purpose of this chapter to provide for the collection of a \$25.00 per ounce excise tax upon the cultivation of marijuana in the Petersburg Borough for commercial use, and upon the manufacture of marijuana or marijuana products in the Petersburg Borough for commercial use. The excise tax is levied when marijuana is cultivated for commercial use in the Petersburg Borough or when marijuana product is manufactured for commercial use in the Petersburg Borough.

4.70.050 - Registration.

- A. No person may (1) receive marijuana or any marijuana product brought or transported into the Petersburg Borough for commercial use or (2) either cultivate marijuana in the Petersburg Borough for commercial use or manufacture marijuana products in the Petersburg Borough for commercial use, without first registering with the Petersburg Borough, and obtaining a certificate of registration. The registration shall be on a form provided by the department and must include the information requested by the department. Registration constitutes the person's consent to the borough's filing of a lien under section 4.70.100 of this chapter on the person's real and personal property for delinquent taxes and related interest, penalties and administrative fees and costs.
- B. The registration required by this chapter is in addition to any other registration or license required by law.
- C. The nonrefundable fee for registration or renewal is \$25.00. A certificate is subject to renewal every five years.
- D. A person who receives marijuana or marijuana products brought or transported into the Petersburg Borough, a marijuana cultivation facility, or a marijuana product manufacturing facility shall display the certificate of registration prominently at the place of business. A certificate of registration is not assignable or transferable.
- E. The department may suspend or revoke a certificate of registration if a distributor fails to comply with the provisions of this chapter.
- F. Any appeal from the department's failure to issue or renew a certificate of registration, or the department's suspension or revocation of a certificate, must be filed within 30 days of the date of mailing of the department's notification to the applicant or person/establishment in which a certificate was previously issued.

4.70.060 - Monthly returns—Personal liability.

- A. Each marijuana establishment shall, on or before the last day of each month, complete, sign under penalty of perjury, and transmit to the department a marijuana excise tax return for the preceding month. The return shall be upon forms provided by the department, and shall be accompanied by payment for the excise taxes due for that preceding month. The return must include, for that preceding month, a total count of the number ounces of marijuana or marijuana product received into the Petersburg Borough, cultivated in the Petersburg Borough, or manufactured in the Petersburg Borough, along with the amount of excise tax due, and such other information and supporting documentation as the Petersburg Borough may require.
- B. A tax return must be filed by each person for which registration is required under this chapter even if such person engaged in no activities subject to excise taxation under this chapter during that preceding month.
- C. The taxes imposed under this chapter and the return required by this section must be received by the department or postmarked on or before the last day of each calendar month following the month covered by the return. If the last day of the month falls on a weekend or holiday, the return must be received or postmarked on or before the next business day.
- D. Any payment submitted to the department for taxes, penalties, interest or administrative fees and costs due under any provision of this chapter shall be applied to the most delinquent tax

return in the following order: first, to unpaid administrative fees and costs; second, to unpaid penalties; third, to unpaid interest; and fourth, to the unpaid taxes.

- E. Any director, officer, employee, agent or member of a corporation, limited liability company, partnership or other business entity having, on behalf of the entity, control over or supervision of, or charged with the responsibility for, obtaining a certificate of registration under section 4.70.050, remitting the tax or the filing of tax returns, or maintaining and producing records under section 4.70.110, is personally liable for any uncollected and/or unpaid taxes, penalties, interest and administrative costs and fees due the borough. Dissolution, sale or other transfer of the business entity does not discharge this liability.

4.70.070 - Involuntary returns and estimated tax.

If a marijuana establishment fails to file a return as required by this chapter, or when the department finds that a return contains inaccurate reporting or is not supported by the records to be maintained pursuant to this chapter, the department may prepare and file a return on behalf of the marijuana establishment. Involuntary returns filed under this section may be premised upon any information that is available to the department, including, among other things, comparative data for similar businesses. The department shall mail to the marijuana establishment's last known address the borough's estimated tax assessment and a written demand for submission of the corrected or required excise tax return and payment within 15 days. Unless the marijuana establishment timely files an accurate excise tax return covering the time period subject to the borough's estimate, or files an appeal under section 4.70.130 within thirty days of the date of mailing of the borough's estimated assessment, the borough's estimate shall become final for the purpose of determining the marijuana establishment's tax liability. A marijuana establishment for whom an involuntary return is filed under this section shall be subject to liability for the tax stated in the return, as well as subject to the penalties and interest provided for in this chapter. The return prepared by the department is, prima facie, good and sufficient for all legal purposes. However, nothing prevents the marijuana establishment from presenting evidence on an appeal to rebut the presumed sufficiency of a return prepared by the department, nor does the presumption of sufficiency alter the parties' respective burdens of proof once the marijuana establishment has presented evidence to rebut that presumption. If a marijuana establishment files a return or an appeal in response to an estimated tax assessment, the marijuana establishment shall, in addition to any other requirements of this chapter, provide to the department the books, records, accounts and other documents pertaining to the period involved in the estimated assessment.

4.70.080 - Amended tax returns.

Any tax return filed hereunder may be amended by the marijuana establishment within one year after the due date of the tax return being amended. No amendment by the marijuana establishment shall be allowed after this one year period.

4.70.090 - Prohibited acts and penalties for violations.

- A. In addition to other prohibited acts specified in this chapter, a person shall not:
 - 1. Conduct activities under this chapter as a marijuana establishment without a valid certificate of registration;

2. Fail or refuse to timely file any return, regardless of whether tax is due;
 3. Fail to timely pay any tax due; or
 4. Fail to maintain records, produce records upon request, or cooperate with a department audit or investigation, under section 4.70.120.
- B. In the event the excise tax is not timely paid, a penalty of eight percent of the unpaid tax shall be assessed and an additional penalty of eight percent of the unpaid tax shall be added for each additional month or part of a month of delinquency up to a maximum penalty of thirty-two percent of the unpaid tax. In addition, a marijuana establishment shall pay any administrative fees or costs, attorney fees, and other costs and fees incurred by the borough in connection with any collection, or attempted collection, of any unpaid tax, interest or penalties under this chapter.
- C. Interest shall accrue on the unpaid taxes due at a rate of ten and one-half percent annually from the date of delinquency until paid. Penalties, administrative costs and fees, and interest shall be collected in the same manner as the tax.
- D. A person who commits an act prohibited by or in violation of this chapter, including those set out in subsections A.1. through A.4. above shall be subject to a civil penalty of not more than \$500.00 to be imposed by the department, in addition to any other relief to which the Borough would be entitled. Each day that a prohibited act or violation continues constitutes a separate act subject to a penalty. An appeal from a penalty imposed hereunder must be filed within 30 days of the date notice of said penalty was mailed or delivered to the person.
- E. The borough may file a civil action for collection of any tax, penalty, interest or administrative fee or cost due under this chapter.
- F. For good cause shown, the borough finance director may waive or reduce all or a portion of any penalty imposed under this chapter.

4.70.100 - Tax lien.

- A. The tax, interest and penalties imposed by this chapter, and the administrative costs under subsection F of this section, shall, to the extent permitted by law constitute a lien in favor of the borough upon all of the real and personal property of every person owing the tax.
- B. The lien imposed by this section arises and attaches at such time as payment becomes delinquent and continues until the entire amount is satisfied.
- C. If delinquent taxes, including interest and penalties, are not paid within ten days from a mailing of notice and demand for payment, a notice of lien may be recorded in the office of the district recorder and upon recordation a lien arising under this section has priority over any other liens, except: 1) those for property taxes and special assessments; 2) those that were perfected before the recording of the excise tax lien for amounts actually advanced before the recording of the excise tax lien; and 3) mechanics' and materialmen's liens for which claims of lien under AS 34.35.070 or notices of right to lien under AS 34.35.064 have been recorded before the recording of the tax lien.
- D. An action to foreclose a lien created by this section shall be commenced and pursued in the manner provided for foreclosure of liens under state law.

- E. The remedy provided in this section is not exclusive and shall be in addition to all other remedies available to the borough to collect the taxes, penalties and interest due under this chapter.
- F. Fees for the administrative costs of filing notice of liens, and releasing liens shall be:
 - 1. Filing of notices of lien: Fifty dollars plus recorder's filing fee;
 - 2. Release of liens: Fifty dollars plus recorder's filing fee.

4.70.110 - Inspection and maintenance of documents and records.

- A. In order to facilitate the administration and enforcement of the provisions of this chapter, each marijuana establishment shall maintain and keep for a period of three years all of the monthly excise tax returns, reports, forms and other records prescribed by this chapter or as prescribed hereafter by the department. The department is specifically authorized and empowered to investigate or audit any return, and to examine and inspect at all reasonable hours the books, records and other documents of any marijuana establishment, including the marijuana establishment's state business license, in order to carry out the provisions of this chapter. At least one week notice would be given to the marijuana establishment being inspected.
- B. A marijuana establishment shall keep complete and accurate written and/or electronic books, records, and accounts, showing receipts of marijuana or marijuana product brought in or transported into the Petersburg Borough, of all marijuana cultivated in the Petersburg Borough, and of all marijuana products manufactured in the Petersburg Borough within the borough, for a period of three years from the date of each event subject to the excise tax in this chapter, including but not limited to: all local, state, and federal tax reports and forms; all inventory, shipping, and accounting records and all sales receipts. Upon request of the department, a marijuana establishment shall produce such books, records, accounts and other documents at the offices of the department.
- C. Information relating to the amount of taxes due from any marijuana establishment, and documents obtained from a marijuana establishment relating to any inspection, investigation or audit, shall be held confidential and shall be kept from public inspection except when the marijuana establishment has failed to comply with the provisions of this chapter. Nothing contained in this section, however, shall be construed to prohibit the delivery to a marijuana establishment, or the marijuana establishment's duly authorized representative, of a copy of any return or report filed by the marijuana establishment nor to prohibit the publication of statistics so classified as to prevent the identification of particular marijuana establishments or their customers, nor to prohibit the furnishing of information on a reciprocal basis to other agencies of the borough, of the State of Alaska, or the United States, which agencies are concerned with the enforcement of tax laws.

4.70.120 - Administrative regulations.

The department shall take all lawful and necessary actions to administer this chapter. The finance director, or his or her designee, may adopt regulations providing for the application and interpretation of this chapter and providing procedures, methods and forms for reporting and collecting the tax imposed by this chapter.

4.70.130 - Administrative appeals.

- A. Appeals under this chapter shall be made in writing to the borough manager, on forms provided by the borough. The manager may appoint a hearing officer to hear the appeal in place of the manager. As soon as practicable after receiving the written appeal, the date, time and place for the hearing of the appeal shall be determined. Such date shall be not less than ten days nor more than thirty days from the date the appeal was filed. Written notice of the hearing shall be given to the appellant, either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at appellant's address shown on the appeal.
- B. Failure of a person to file an appeal in accordance with the provisions of this chapter shall constitute a waiver of that person's right to the hearing and of any adjudication of the action appealed from. Only those matters or issues specifically raised by the appellant shall be considered in the hearing on the appeal. If the appellant fails to appear at the hearing, the manager or hearing officer shall issue a decision without taking evidence from the appellant, unless reasonable cause is shown for failure to appear within seven days after the date of the hearing.
- C. The hearing shall be conducted informally, and may be governed by such rules and procedures as the manager or hearing officer may choose. At the hearing, the appellant may appear in person or by agent or attorney, and offer documents and testimony, of appellant or other witnesses, in support of the appeal. The department shall appear at the hearing and may offer documents and testimony in support of the action which is the subject of the appeal. The appellant and department personnel may cross-examine witnesses, under reasonable time limits adopted by the manager or hearing officer. Oaths may be administered, and a record shall be kept of the proceedings. The manager or hearing officer may require production of potentially relevant documents.
- D. A written final decision on the appeal shall be issued within 15 days of the hearing, including findings of fact. The decision shall be provided to the appellant, either by causing a copy to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at appellant's address shown on the appeal.
- E. The final decision of the borough manager or hearing officer may be appealed to the Superior Court, First Judicial District, State of Alaska, within 30 days of the date the decision was issued and in accordance with applicable Court Rules. For purposes of this section, the date of issuance is the date upon which the decision was mailed or delivered to the appellant.

4.70.140 – Use of Proceeds.

Proceeds from the collection of marijuana excise taxes will be deposited into the Borough's Property Development Fund. The purpose of the Property Development Fund is to provide funding for the purchase and development, rehabilitation or improvement of real property owned by the municipality and for the administration of real property transactions, including, but not limited to, the sale, lease or trade of real property.

Section 4. Severability: If any provision of this ordinance or any application to any person or circumstance is held invalid, the remainder of this ordinance and the application of other persons or circumstances shall not be affected.

Section 5. Effective Date: This Ordinance shall become effective areawide immediately upon final passage.

Passed and approved by the Petersburg Borough Assembly, Petersburg, Alaska this 3rd day of October, 2016.

Attest:

Debra K. Thompson, Borough Clerk

Mark Jensen, Mayor

Adopted:
Published:
Effective: