

Introduced by: Fannie Suvlu, Mayor
Date 1/25/2018
Public Hearing: 2/22/2018

Action: PASSED
Vote: 6 to 0

CITY OF UTQIAGVIK, ALASKA

ORDINANCE #01-2018

AN ORDINANCE ENACTING A SALES TAX ON RETAIL MARIJUANA SALES IF THE ORDINANCE IS RATIFIED BY A MAJORITY OF VOTERS AT A SPECIAL ELECTION ON APRIL 30, 2018

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

WHEREAS, under the provisions of AS 17.38, retail sales of marijuana began in 2016; and

WHEREAS, because the general sales tax imposed by Chapter 4.20 of the City of Utqiagvik Code of Ordinances has been suspended since 1993; and

WHEREAS, AS 29.45.670 requires that a new sales tax must be ratified by a majority of voters at an election;

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF UTQIAGVIK, ALASKA, AS FOLLOWS:

SECTION 1. Classification. Except as provided in the next sentence of this Section, Section 2 of this ordinance is permanent in nature and shall be incorporated into the City of Utqiagvik Code of Ordinances (“Code”) whereas Section 3 of this ordinance is not permanent in nature and shall not be incorporated into the Code. Further, Section 2 shall not be incorporated into the Code unless the voters ratify it at the April 30, 2018 special election provided for in Section 3 of this ordinance.

SECTION 2. Addition of Chapter 4.23 to the Code.

Title 4 of the Code is amended by adding a new Chapter 4.23 to read as follows:

Chapter 4.23. MARIJUANA SALES TAX

- Sec. 4.23.010. Definitions.
- Sec. 4.23.020. Marijuana sales tax levy.
- Sec. 4.23.030. Due date; delinquency.
- Sec. 4.23.040. Obligation of seller to collect.
- Sec. 4.23.050. Seller registration; certification; revocation.
- Sec. 4.23.060. Segregation of taxes collected; title.
- Sec. 4.23.070. Sales tax returns; transmittal; payment of taxes due.
- Sec. 4.23.080. Estimated tax.
- Sec. 4.23.090. Administrative appeals.
- Sec. 4.23.100. Presumption.
- Sec. 4.23.110. Sales tax returns; confidential information.
- Sec. 4.23.120. Recordkeeping duty; investigation.
- Sec. 4.23.130. Recovery of taxes.
- Sec. 4.23.140. Tax lien.
- Sec. 4.23.150. Interest rate; administrative costs.
- Sec. 4.23.160. Penalties for violations.

Sec. 4.23.010. Definitions.

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

Certification of registration means the certificate issued by the City under section 4.23.050.

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

Consumer means a person 21 years of age or older who purchases marijuana or marijuana products for personal use by persons 21 years of age or older, but not for resale to others.

Estimated tax means the tax determined under section 4.23.080.

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.

Retail marijuana store means an entity registered to purchase marijuana from marijuana establishments as that term is defined in AS 38.17.900 and Chapter 8.19 of the Code, and to sell marijuana to buyers.

Retail sale means the transfer of any marijuana from a marijuana retail store to any buyer, for any consideration.

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

Sales price means the price of any marijuana.

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

Tax means the marijuana sales tax is levied under this chapter.

Taxable retail sale means any sale made within the City that is not entirely exempt from the tax levied under this chapter.

Unremitted tax means

(1) Any tax not remitted to the City that a seller is required by this chapter to collect from a buyer, notwithstanding whether the seller actually collects such tax from a buyer; and

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

Sec. 4.23.020. Marijuana sales tax levy.

There is levied within the corporate limits of the City a tax of eight (8) percent upon the sales price of all retail sales of marijuana made within the corporate limits of the City.

Sec. 4.23.030. Due date; delinquency.

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

Sec. 4.23.040. Obligation of seller to collect.

Every seller making sales taxable under this chapter shall collect the taxes from the buyer at the time of sale, or with respect to credit transactions at the time of collection of sales price, and shall deliver the same to the City in accordance with the requirements in this chapter. The seller will be compensated the amount of three (3) percent of the taxes transmitted to the City for the use of seller's resources in collecting the taxes. This compensation will only occur when the seller submits reports and pays the taxes on time.

Sec. 4.23.050. Seller registration; certification; revocation.

(a) All sellers of marijuana within the City must possess a current certificate of registration, for the purpose of collecting and remitting the tax under this chapter, prior to engaging in any retail sales or opening additional places of business.

(b) All sellers requiring a certificate of registration under subsection (a) of this section must first possess current State of Alaska and City of Utqiagvik business licenses, and a current state marijuana license as required by AS 17.38, and, if applicable, a City of Utqiagvik marijuana license. Copies of the business licenses and all applicable marijuana licenses must be provided to the City before a certificate of registration will be issued.

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

(d) The certificate of registration is neither assignable nor transferable. The seller must immediately surrender the certificate to the City if the seller ceases to do business at the location named on the certificate, or if the seller otherwise sells, assigns, transfers, conveys, or abandons the seller's business to any person or any other entity. When there is a change of address for the seller's place of business, a new certificate of registration is required bearing the same registration number, but showing the new location address.

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

(f) The City may revoke a certificate of registration if a seller fails to comply with any of the provisions of this chapter. A seller may not engage in retail sales while the certificate of registration is revoked.

(g) Any seller who violates any requirement of this section is subject to the penalties provided under this chapter. The City is also entitled to injunctive relief to prevent the seller from engaging in retail sales until the seller complies with the requirements of this section.

Sec. 4.23.060. Segregation of taxes collected; title.

Upon collection by the seller of the taxes imposed in this chapter, title to the collected taxes vests in the City. Pending transmittal to the City, the seller shall hold the tax funds in trust for the benefit of the City.

Sec. 4.23.070. Sales tax returns; transmittal; payment of taxes due.

(a) Every seller possessing a current certificate of registration shall, on or before the 15th day of the month, file a properly completed return for the preceding month upon forms furnished by the City, remit payment, and provide the following information:

- (1) All retail sales made within the City.
- (2) The amount received from nontaxable sales.
- (3) The amount received from all taxable sales.
- (4) The amount of tax.
- (5) The taxes collected.
- (6) Such other information and supporting documentation as the City may require.

(b) Every seller holding a certificate of registration in the City shall sign and transmit the return together with taxes collected to the City on or before the proper date.

(c) A report shall be filed by every seller possessing a current certificate of registration even if the seller has not engaged in taxable retail sales during the reporting period.

(d) All returns must be received by the City no later than 4:00 p.m. on the 15th day of the month following tax collection. Postmarks will not be considered.

Sec. 4.23.080. Estimated tax.

If the City is unable to ascertain the tax due to be remitted by a seller by reason of the

failure of the seller to keep accurate books, allow inspection, failure to file a return or falsification of records, the City may make an estimate of the tax due based on any available evidence. Notice of the City's estimate of taxes due will be mailed to the seller. Unless the seller files an accurate monthly report covering the time period subject to the City's estimate or files a written appeal within 30 days of the mailing of the City's estimate, the City's estimate becomes final for the purpose of determining the seller's tax liability.

Sec. 4.23.090. Administrative appeals.

(a) A seller or buyer may appeal to the City Mayor any estimated tax, penalties, costs, fees, or other decision under this chapter made by the City. Any appeal must be filed within 30 days after the notice of any decision is mailed to the seller or buyer. The failure to appeal a decision of the City renders the decision final.

(b) The appeal must state the legal and factual basis for the appeal and include all written evidence relevant to the appeal within the appellant's possession. If the appeal raises relevant questions of fact, the Mayor shall conduct a hearing. At the hearing, the parties shall have the right to present testimony and cross-examine witnesses. The Mayor shall then issue a written decision that includes findings of fact.

(c) An administrative appeal decision by the Mayor is a final decision that shall be enforced under this chapter unless stayed by court order or by agreement of the City and appellant. The Mayor's final decision may be appealed to the State of Alaska Superior Court in the Second Judicial District as provided by state law.

Sec. 4.23.100. Presumption.

(a) Every sale made within the City, unless explicitly exempted by this chapter, is presumed to be subject to the tax imposed under this chapter in any action to enforce the provisions of this chapter.

Sec. 4.23.110. Sales tax returns; confidential information.

(a) All returns filed with the City for the purpose of complying with the terms of this chapter and all data obtained from such returns are confidential unless disclosure is otherwise required by law.

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

(c) Nothing in this chapter will be construed to prohibit a seller or their duly authorized representative from receiving a copy of any return or report filed by the seller, or to prohibit the publication by the City of statistics classified so as to prevent the identification of particular reports or returns.

Sec. 4.23.120. Recordkeeping duty; investigation.

(a) A seller shall keep complete and accurate books, records, and accounts, showing all inventory purchases and the gross receipts for all sales made within the City, for a period of three years from the date of each sale. In addition to all record keeping requirements under this chapter, a seller shall maintain all written and electronic records relating to any marijuana sale, for a period of three years after such sale, including but not limited to:

1. All tax reports and forms;
2. All accounting records;
3. All sales receipts; and
4. All documentary evidence supporting any exemption provided under this chapter.

(b) Upon reasonable notice, a seller must make all records and materials specified in subsection (a) of this section available for inspection by the City or authorized representative during customary business hours.

(c) The City may audit seller's monthly reports by examining any of the records and materials specified in subsection (a) of this section and other data deemed necessary.

(d) For the purpose of ascertaining the correctness of a return or for the purpose of determining the amount of tax collected or which should have been collected by any person, the City may investigate any matters covered by this chapter and may examine any relevant books, papers, records or memoranda of any such person, and may require the attendance of such person, or any officer or employee of such person at a hearing connected to any such investigation. The Mayor shall have the power to administer oaths to such persons. The Mayor shall issue all formal subpoenas to compel attendance or to require production of relevant books, papers, records or memoranda. Subpoenas issued under the terms of this chapter may be served by any person.

Sec. 4.23.130. Recovery of taxes.

(a) Taxes due but not paid may be recovered by the City by an action at law against the buyer. Taxes collected but not transmitted may be recovered by an action against the

seller, and sales tax returns shall be prima facie proof of taxes collected but not transmitted.

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

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

Sec. 4.23.140. Tax lien.

(a) Any tax, unremitted tax, penalties, interest, costs and fees that this chapter requires a seller or buyer to pay or remit shall constitute a lien in favor of the City upon all assets, earnings, revenue and property of the seller, other persons liable under subsection 4.23.140(c) (recovery of taxes), or the buyer. This lien arises when any such payment or remittance is not made when due and continues until the payment or remittance is fully satisfied through execution, foreclosure sale, or any other legal means.

(b) When recorded, a tax lien authorized under this section has priority over all other liens except all liens perfected before the recording of the tax lien for amounts actually advanced before the recording of the tax lien. Upon such filing, the lien is superior to all other liens except as otherwise provided by state or federal law.

Sec. 4.23.150. Interest rate; administrative costs.

(a) A simple interest rate of 1.25 percent per month, or a lesser rate if required by state law, shall accrue on all unremitted taxes, not including penalty and administrative fees, from the original due date provided under this section until remitted in full.

(b) In addition to any other penalties imposed under this chapter, a seller shall pay any administrative fees, outside collection agency fees, attorney fees, and other costs and fees incurred by the City or its agent(s) in connection with any collection, or attempted collection, from the seller of any unremitted tax, unpaid interest, or unpaid penalties due under this chapter.

(c) The City will apply a seller's payment in the following order: first to any unpaid administrative fees, outside collection agency fees, attorney fees, and other collection costs and fees; second to any unpaid penalties; third to any unpaid interest that has accrued on un-remitted taxes; and fourth, to the principal of any un-remitted taxes.

Sec. 4.23.160. Penalties for violations.

(a) *Failure to file or remit.* A seller who has made sales in the City and who thereafter fails to file a sales tax return or remit the collected tax as required by this chapter shall incur a civil penalty of \$100.00 if the return or the tax is received later than the last day of the month in which it is due and shall incur a civil penalty of \$1,000.00 if the return or the tax is received later than the last day of the next month following the month in which it was due.

(b) *Non-retention of records.* A seller who does not provide required records upon request shall incur a civil penalty of \$1,000.00.

(c) *Collection of taxes.* A seller who in the course of business makes sales upon which a tax is levied under this chapter and who fails to collect such taxes shall incur a civil penalty of double the tax which should have been collected.

(d) *False statements.* Any person who makes any false statement to a seller or to the City which is material in determining whether a sale is taxable under this chapter is guilty of a misdemeanor.

(e) *Certificate of registration.* Any seller and any officer of a corporate seller failing to file a certificate of registration or failing to furnish the data required in connection with such certificate or failing to display or surrender the certificate of registration as required by this chapter, or attempting to assign or transfer such certificate shall be guilty of a misdemeanor, subject to a fine of \$500.00, imprisonment for 30 days, or both.

(f) *Continuing violation.* A separate offense shall be deemed committed upon each day of a continuing violation.

Section 3. The City Clerk is directed to place this ordinance on the ballot for ratification by the voters of the City of Utqiagvik at the April 30, 2018 special election, with the ballot proposition to read as follows:

Ballot Question No. #1

Information: On February 22, 2018, the Utqiagvik City Council passed Ordinance No. #01-2018, which enacted an eight (8) percent retail sales tax on marijuana sold within the City of Utqiagvik. Should Ordinance No. #01-2018 be ratified?

Yes

No

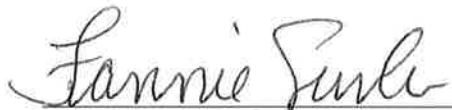
A “Yes” vote ratifies Ordinance No. #01-2018, and allows the City of to impose a

8% retail sales tax on any sale of marijuana within the City of Utqiagvik.

A “No” vote rejects Ordinance No. #01-2018, and no sales tax may be imposed by the City of Utqiagvik on the retail sale of marijuana.

Section 4. This ordinance shall not become effective unless and until it is ratified by the voters of the City of Utqiagvik.

ENACTED THIS 22ND DAY OF FEBRUARY 2018, by a vote of 6 in favor and 0 opposed.


Fannie Suvlu, Mayor

ATTEST:


Loyla T. Leavitt, City Clerk

