

Introduced By: Council Member Pruhs  
Introduced: July 6, 2015

**ORDINANCE NO. 5986, AS AMENDED**

**AN ORDINANCE ENACTING A RETAIL SALES TAX ON MARIJUANA  
AND REFERRING THE ORDINANCE FOR RATIFICATION AT THE  
NEXT GENERAL ELECTION**

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

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

**WHEREAS**, Fairbanks Charter Section 6.5 provides that any new or additional sales tax levied by the City Council, other than hotel/motel, alcohol, or tobacco, must be approved by the voters in a general election; and

**WHEREAS**, in order to be in place when the legal sale of marijuana begins in 2016, the ratification of an ordinance imposing a sales tax on the sale of marijuana must be on the ballot for the City's general election in October of 2015;

**NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF FAIRBANKS, ALASKA, as follows:**

**SECTION 1.** Fairbanks General Code, Chapter 74, is hereby amended by adding a new Article VI – Marijuana Sales Tax, as follows:

**ARTICLE VI. MARIJUANA SALES TAX**

**Sec. 74-200. Definitions.**

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

*Marijuana* means all parts of the plant (genus) Cannabis, whether growing or not, the seed thereof, the resin extracted from any part of the plant, and any compound, manufacture, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate; *marijuana* does not include fiber produced from the stalks, oil or cake made from the seeds of the plant, sterilized seed of the plant that is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products.

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

*Certification of registration* means the certificate issued by the chief financial officer under section 74-204.

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

*Estimated tax* means the tax determined under section 74-207.

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

*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 as levied under this article.

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

*Unremitted tax* means

- (1) Any tax not remitted to the city that a seller is required by this article to collect from a buyer, notwithstanding whether the seller actually collects such tax from a buyer; and
- (2) Any estimated tax not remitted to the city.

**Sec. 74-201. Marijuana sales tax levy.**

There is levied within the corporate limits of the city a tax of five percent upon the sales price of all retail sales of marijuana made within the corporate limits of the city.

**Sec. 74-202. Due date; delinquency.**

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

**Sec. 74-203. Obligation of seller to collect.**

Every seller making sales taxable under this article shall collect the taxes from the buyer at the time of sale, or with respect to credit transactions at the time of collection of sales price, and shall deliver the same to the City of Fairbanks in accordance with the requirements in this article. The seller will be compensated the amount of two 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. 74-204. Seller registration; certification; revocation.**

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

(b) All sellers requiring a certificate of registration under subsection (a) of this section must first possess current State of Alaska and City of Fairbanks business licenses, and a current state marijuana license as required by AS 17.38, and, if applicable, a City of Fairbanks 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 chief financial officer, the chief financial officer 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 chief financial officer 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 chief financial officer upon any change in form of ownership, business name, or contact information. The chief financial officer, 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 chief financial officer before taking possession of the new certificate.

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

(g) Any seller who violates any requirement of this section is subject to the penalties provided under this article. 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. 74-205. Segregation of taxes collected; title.**

Upon collection by the seller of the taxes imposed in this article, 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. 74-206. 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 and remit payment for the amount received from the following:

- (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 papers as the chief financial officer 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 clerk's office no later than 4:00 p.m. on the 15th day of the month following tax collection. Postmarks will not be considered.

**Sec. 74-207. 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. 74-208. Administrative appeals.**

(a) A seller or buyer may appeal to the city mayor any estimated tax, penalties, costs, fees, or other decision under this article made by the chief financial officer. 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 chief financial officer 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 city 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 article unless stayed by court order or by agreement of the city and appellant. The mayor's final decision may be appealed to superior court in the fourth judicial district as provided by state law.

**Sec. 74-209. Presumption; credit.**

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

(b) A credit will be allowed for taxes erroneously collected. Such credit will be made by the chief financial officer after receipt and review of documentation and amended return supporting such request. Upon receipt of such documentation, the chief financial officer will examine the documentation and submit a written decision within 15 days.

**Sec. 74-210. Sales tax returns; confidential information.**

(a) All returns filed with the city for the purpose of complying with the terms of this article and all data obtained from such returns are declared to be confidential, and such returns and data obtained from such returns will be kept from inspection of all persons, except the chief financial officer and the city attorney; nevertheless, upon the advice of the city attorney, the chief financial officer may present to the finance committee or city council in private sessions assembled, any return or data obtained from such returns.

(b) It is unlawful for any city employee to publicly divulge any financial information obtained from any return filed with the city or from any data obtained from any such returns unless authorized by the seller or unless the person receiving such information is permitted to view such

returns under the terms of this article.

(c) It is the duty of the chief financial officer to safely keep the returns referred to in this article and all data taken from such returns secure from public inspection and secure from all private inspection except as provided in the article. The chief financial officer may, after six years from the date any such return has been filed, destroy the return.

(d) The use of such returns in a criminal or civil action brought to enforce the terms of this article against any person is not a violation of this article. 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.

(e) Nothing in this article 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. 74-211. 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 their record keeping requirements under this article, 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 local, state, and federal tax reports and forms;
2. All accounting records;
3. All sales receipts; and
4. All documentary evidence supporting any exemption provided under this article.

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

(c) The chief financial officer may conduct random audits of seller's monthly reports by examining any of the records and materials specified in subsection (a) of this section and other data deemed necessary.

(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 chief financial officer or mayor may hold investigations and hearings concerning any matters covered by this article 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. 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.

(e) All subpoenas issued under the terms of this article may be served by any person. The fees of witnesses for attendance and trial shall be the same as the fees of witnesses before the superior court, such fees to be paid when the witness is excused from further attendance. When a witness is subpoenaed at the instance of any party to any such proceeding, the mayor may require that the cost of service of the subpoena and the fee of the witness be borne by the party at whose instance the witness is summoned. In such case the mayor may, at his discretion, require a deposit to cover the cost of such service and witness fees. A subpoena issued shall be served in the same manner as a subpoena issued out of a court of record.

(f) The superior court, upon the application of the mayor, is empowered to compel obedience to such subpoena and compel the attendance of witnesses, the production of relevant books, papers, records or memoranda, and the giving of testimony before the city attorney or any of his duly authorized representatives in the same manner and extent as witnesses may be compelled to obey the subpoenas and order of the court. For purposes of this section, the term "witness," in addition to any person covered under the terms of this article, shall include any person or entity with knowledge or information relevant to sales made under this article.

(g) The mayor, or any party in an investigation or hearing before the mayor, may cause the deposition of witnesses residing within or outside the state to be taken in the manner prescribed by law for like depositions in civil actions in courts of this state, and to that end compel the attendance of witnesses and the production of relevant books, papers, records or memoranda.

#### **Sec. 74-212. 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 article, 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 article.

#### **Sec. 74-213. Tax lien.**

(a) Any tax, unremitted tax, penalties, interest, costs and fees that this article requires a seller or buyer to pay or remit shall constitute a lien in favor of the city upon all assets, earnings, revenue and property of the seller, other persons liable under subsection 74-212(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. This lien is not valid as against a mortgagee, pledgee, purchaser, or judgment creditor until notice of the lien is recorded in the office of the district recorder for the fourth judicial district.

(b) When recorded, a lien authorized under this section has priority over all other liens except those for property taxes and special assessments and all liens perfected before the recording of the sales tax lien for amounts actually advanced before the recording of the sales tax lien and mechanics' and materialmen's liens which have been recorded before the recording of the sales tax lien. Upon such filing, the lien is superior to all other liens except as otherwise provided by state or federal law.

**Sec. 74-214. Foreclosure.**

(a) Delinquent sales tax liens on real property shall be enforced by quarterly foreclosures on March 31, June 30, September 30 and December 31.

(b) Tax liens shall be foreclosed in the manner provided for in sections 58-49 through 58-61.

**Sec. 74-215. 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 article, 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 article.

(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. 74-216. 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 article 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 as listed in Section 74-211 shall incur a civil penalty of \$1,000.00.

(c) *Collection of taxes.* A seller who in the course of his business makes sales upon which a tax

is levied under this article 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 chief financial officer or mayor which is material in determining whether a sale is taxable under this article is guilty of a misdemeanor and shall be punished as provided in section 1-15.

(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 article, or attempting to assign or transfer such certificate shall be guilty of a misdemeanor and shall be punished as provided in section 1-15.

(f) *Penalty.* Any person who violates any of the provisions of this article shall be punishable as provided in section 1-15. A separate offense shall be deemed committed upon each day of a continuing violation.

**Sec. 74-217. Collection policy.**

It shall be the policy of the city that delinquent taxes shall be promptly collected without offset, compromise or time extensions for payment.

**Sec. 74-218. Rules and regulations.**

(a) The mayor is empowered to enact rules and regulations to implement the sales tax levied under this article.

(b) The chief financial officer shall take all lawful and necessary actions to administer this article including, but not limited to, adopting and revising procedures, fees, and written guidelines for the determination of the taxability of sales.

(c) The chief financial officer may also take other lawful actions to administer this article including, but not limited to, issuing written determinations of the taxability of specific sales upon request and contracting services for collection of delinquent accounts.

(d) With the approval of the chief financial officer, the finance department staff shall prepare, implement, and revise forms for the administration of this article.

**Section 2.** The City Clerk is directed to place this ordinance on the ballot for ratification by the voters of the City of Fairbanks at the next general election, with the ballot proposition to read as follows:

**Ballot Question No.** \_\_\_\_\_

**Information:** On July 20, 2015, the Fairbanks City Council passed Ordinance No. 5986, as Amended, which enacted a five percent retail sales tax on Marijuana sold within the City of Fairbanks. Fairbanks Charter Section 6.5 provides that any new or additional sales tax levied by the City Council must be approved by the voters in a general election.

Should Ordinance No. 5986, as Amended, An Ordinance Enacting a Retail Sales Tax on Marijuana and Referring the Ordinance for Ratification at the Next General Election, be ratified?

\_\_\_\_\_ Yes

\_\_\_\_\_ No

A "Yes" vote ratifies Ordinance No. 5986, as Amended, and allows the City of Fairbanks to impose a 5% retail sales tax on any sale of marijuana within the City of Fairbanks.

A "No" vote rejects Ordinance No. 5986, as Amended, and no sales tax may be imposed by the City of Fairbanks on the sale of marijuana.

**Section 3.** This ordinance was passed by this Council on the 20th day of July 2015 but does not become effective until ratified by the voters of the City of Fairbanks.



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**JOHN EBERHART, MAYOR**

AYES: Walley, Matherly, Gatewood, Pruhs, Cleworth, Staley

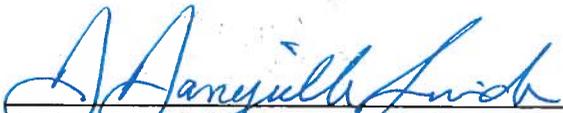
NAYS: None

ABSENT: None

ADOPTED: July 20, 2015

ATTEST:

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Daniyelle Snider, CMC, City Clerk  
\_\_\_\_\_  
Paul J. Ewers, City Attorney