

CITY AND BOROUGH OF SITKA
ORDINANCE NO. 2017-33

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA AMENDING SITKA GENERAL
CODE TITLE 4 "REVENUE AND FINANCE" BY ADDING A NEW CHAPTER 4.27 "EXCISE
TAX ON MARIJUANA AND MARIJUANA PRODUCTS"

1. **CLASSIFICATION.** This ordinance is of a permanent nature and is intended to be a part of the Sitka General Code of the City and Borough of Sitka, Alaska.
2. **SEVERABILITY.** If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and application thereof to any person and circumstances shall not be affected thereby.
3. **PURPOSE.** The purpose of this ordinance is to amend the SGC Title 4 "Revenue and Finance" by adding a Chapter 4.27 to provide for an excise tax on marijuana and marijuana products.
4. **ENACTMENT.** NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka that the Sitka General Code Title 4 "Revenue and Finance" amended as follows to add Chapter 4.27 "Excise Tax on Marijuana and Marijuana Products" (new language underlined; deleted language stricken):

* * *

Chapter 4.27
EXCISE TAX ON MARIJUANA AND MARIJUANA PRODUCTS

Sections:

- 4.27.010 Applicability, purpose and authority.
- 4.27.020 Definitions.
- 4.27.030 Excise tax on marijuana.
- 4.27.040 Exemptions.
- 4.27.050 Permit required – Issuance.
- 4.27.060 Expiration of permits.
- 4.27.070 Ownership change to be reported.
- 4.27.080 Transfer of permit.
- 4.27.090 Refund or credit of tax.
- 4.27.100 Display of permit – Surrender of permit – Suspension or revocation of permit.
- 4.27.110 Tax returns.
- 4.27.120 Involuntary returns.
- 4.27.130 Amended tax returns.
- 4.27.140 Application of payments.
- 4.27.150 Prohibited acts and penalties.
- 4.27.160 Interest on unpaid tax.
- 4.27.170 Civil fraud.
- 4.27.180 Tax lien.

- 50 4.27.190 Taxpayer, permittee, or other person remedies.
- 51 4.27.200 Inspection and maintenance of documents and records.
- 52 4.27.210 Administrative regulations.
- 53 4.27.220 Confidential and nonconfidential tax information.
- 54 4.27.230 Use of Proceeds.

55 **4.27.010 Applicability, purpose and authority.**

56 A. Applicability. Unless provided otherwise, this chapter shall apply to the taxation of all
57 marijuana cultivated within the city and borough for commercial or retail sale purposes,
58 including marijuana cultivated by a standard marijuana cultivation facility and a limited
59 marijuana cultivation facility.

60 B. Purpose. The purpose of this section is to provide for the levy of an excise tax on
61 marijuana cultivated within the city and borough by any marijuana cultivation facility, and
62 the enforcement of such tax.

63 C. Authority. This chapter and the regulations related to marijuana establishments
64 herein are adopted pursuant to the authority granted by AS 17.38.100 and 29.35.010(6).

65 **4.27.020 Definitions.**

66 A. "Flower and bud" means the hairy, sticky, or crystal-covered parts of mature female
67 marijuana plants generally harvested for their high potency content;

68 B. "Marijuana" has the meaning given in AS 17.38.900;

69 C. "Marijuana cultivation facility" has the meaning given in AS 17.38.900 and includes
70 both a standard marijuana cultivation facility and a limited marijuana cultivation facility
71 as licensed under 3 AAC 306.400;

72 D. "Marijuana product manufacturing facility" has the meaning given in AS 17.38.900;

73 E. "Marijuana testing facility" has the meaning given in AS 17.38.900;

74 F. "Ownership change" means:

75 1. If the licensee is a partnership, including a limited partnership, any change in
76 the identity of the partners, or in the ownership percentages held by any partners;

77 2. If the licensee is a limited liability company, any change in the identity of the
78 members, or in the ownership percentage held by any member; or

79 3. If the licensee is a corporation, any sale of corporate stocks to a person not
80 currently an owner, or any change of the percentage ownership of an existing
81 shareholder;

82 G. "Retail marijuana store" has the meaning given in AS 17.38.900;

83 H. "Transfer" means the exchange of marijuana, as defined under AS 17.38.900, with or
84 without consideration, or by barter, between marijuana establishments, or within
85 marijuana establishments possessing multiple permits, for commercial purposes.

86 **4.27.030 Excise tax on marijuana.**

87 A. Tax to Be Paid. The city and borough hereby levies an excise tax on the flower and
88 bud of all marijuana cultivated in any facility licensed pursuant to 3 AAC 306.400,
89 including standard marijuana cultivation facilities, and limited marijuana cultivation
90 facilities as follows:

91 **B. Marijuana Excise Tax.**

92 1. Any part of the flower and bud of nonexempt marijuana transferred from a
93 marijuana cultivation facility shall be taxed at \$20.00 per ounce.

94 2. A marijuana cultivation facility that is also licensed as a marijuana product
95 manufacturing facility must pay tax on the flower and bud of all nonexempt
96 marijuana transferred from the cultivation facility to the product manufacturing
97 facility for the month in which the marijuana was transferred.

98 3. A marijuana cultivation facility that is also licensed as a retail marijuana store
99 must pay tax on the flower and bud of all nonexempt marijuana transferred from
100 the cultivation facility to the retail marijuana store for the month in which the
101 flower and bud of the marijuana was transferred.

102 **4.27.040 Exemptions.**

103 A. The tax imposed under this chapter does not apply to marijuana if the state of Alaska
104 prohibits the levying of this tax under AS 17.38.

105 B. Transfers to a licensed marijuana testing facility are exempt from the excise tax on
106 marijuana.

107 **4.27.050 Permit required – Issuance.**

108 A. Except as otherwise provided by AS 17.38.020, no marijuana cultivation facility may
109 plant, propagate, cultivate, harvest, trim, dry, cure, package, or transfer marijuana
110 without registering and being issued a permit under this chapter.

111 B. The city and borough Finance Department, upon application, shall issue a permit to
112 each marijuana cultivation facility. The application must include the following
113 information:

114 1. The applicant's name and address;

- 115 2. The name under which the marijuana cultivation facility will operate;
116 3. A copy of the applicant's city and borough business license and state
117 marijuana establishment license; and
118 4. Such other information that is indicated on the city and borough's application
119 form.

120 C. The Finance Department may refuse to issue a permit if there is reasonable cause to
121 believe that the applicant has willfully withheld information requested to determine the
122 applicant's eligibility to receive a permit, or if there is reasonable cause to believe that
123 information submitted in the application is false or misleading and is not made in good
124 faith, or if the applicant has any past due amounts owed to the city and borough.

125 D. A permit required by this chapter is in addition to any license required by law.

126 E. A permit issued under this chapter shall include:

- 127 1. The name and address of the permittee;
128 2. The type of business to be conducted;
129 3. The address at which the business is conducted; and
130 4. A permit number.

131 **4.27.060 Expiration of permits.**

132 A. Permits issued under this chapter shall expire upon notice in writing by permittee to
133 the city and borough or upon ownership change.

134 B. A person whose permit is lost, stolen, or defaced shall immediately file an application
135 with the Finance Department for reissuance of the permit.

136 **4.27.070 Ownership change to be reported.**

137 If any change in a permitted establishment will result in a change in the controlling
138 interest of the permit, the permittee shall notify the Finance Department not less than
139 seven days before the effective date of the ownership change.

140 **4.27.080 Transfer of permit.**

141 A permit under this chapter is not transferrable, but instead expires upon the effective
142 date of an ownership change. Not less than seven days before the effective date of an
143 ownership change, the permittee shall provide written notice to the Finance Department
144 of the same, which must include the name, address, type of organization, and

145 jurisdiction of organization of the transferee, and surrender the permit to the Finance
146 Department. The new owner may apply for a permit under this chapter.

147 **4.27.090 Refund or credit of tax.**

148 A. If a remittance by a permittee exceeds the amount due, and the Finance Department,
149 on audit of the account in question, is satisfied that this is the case, the Finance
150 Department shall, upon written request of the permittee, refund the excess to the
151 permittee without interest.

152 B. Any claim for refund filed more than one year after the due date of the tax is forever
153 barred.

154 C. A permittee may claim a credit for excise tax paid for marijuana that is returned to the
155 permittee. The credit must be claimed for the month in which the marijuana was
156 returned. The permittee must provide proof acceptable to the Finance Department that
157 the tax had been previously paid and was refunded to the purchaser.

158 **4.27.100 Display of permit – Surrender of permit – Suspension or revocation of**
159 **permit.**

160 A. A permit issued under this chapter shall be prominently displayed at the permittee's
161 place of business.

162 B. A permittee shall surrender a permit within 10 days after:

163 1. A revocation of permit;

164 2. A cessation of business;

165 3. A change of ownership; or

166 4. A change of a place of business.

167 C. The Finance Department may suspend or revoke a permit issued under this chapter:

168 1. If any money that is owed to the city and borough is more than 30 days past
169 due;

170 2. For violation of this chapter or a regulation of the city and borough adopted
171 pursuant to this chapter; or

172 3. If a permittee ceases to act in the capacity for which the permit was issued.

173 D. No marijuana cultivation facility whose permit is suspended or revoked shall plant,
174 propagate, cultivate, harvest, trim, dry, cure, or package marijuana for transfer during

175 the suspension or revocation. No disciplinary proceeding or action is barred or abated
176 by the expiration, transfer, surrender, suspension, or revocation of a permit issued
177 under this chapter.

178 E. The city and borough Clerk will inform the Alaska Marijuana Control Board of a
179 permittee's failure to pay tax due or to file a return as required by this chapter, and will
180 initiate permit suspension or revocation proceedings by filing an accusation as provided
181 in AS 17.38.090.

182 **4.27.110 Tax returns.**

183 A. On or before 4:00 p.m. on the last day of each calendar month or the first business
184 day thereafter if the last calendar day of any month is a Saturday, Sunday, or a city and
185 borough observed holiday, a permittee shall submit to the Finance Department a tax
186 return for prior month transactions, upon forms provided by the Finance Department, for
187 each permit, and submit payment for the taxes due as prescribed by the Finance
188 Department.

189 1. The return shall be signed under penalty of perjury by the permittee or agent
190 and shall include:

191 a. A copy of the tax return for the preceding month submitted by the
192 permittee to the Alaska Department of Revenue in accordance with 15
193 AAC 61.010;

194 b. The name and address of the permittee;

195 c. The name and address of the person filing the return, if different from
196 the permittee;

197 d. The number of the applicable permit issued under this chapter;

198 e. The name under which the marijuana cultivation facility is being
199 operated;

200 f. A report setting forth the total amount of flower and bud transferred from
201 the marijuana cultivation facility in ounces, with fractional ounces
202 calculated to the third decimal place, for the preceding month;

203 g. The amount of tax due; and

204 h. Such other information and supporting documentation which may be
205 required by the Finance Department.

206 B. A marijuana cultivation facility permitted under this chapter shall file a tax return each
207 month, even if it did not cultivate or transfer any marijuana in the city and borough
208 during the preceding month.

209 C. The taxes imposed under this chapter and the return required by this section must be
210 received by the Finance Department, as provided in subsection A of this section;
211 except, if mailed they will be considered received if postmarked on or before the last
212 day.

213 D. A separate tax return must be filed for each location when a taxpayer is operating in
214 several locations within the city and borough.

215 **4.27.120 Involuntary returns.**

216 If a permittee fails to file a return as required by this chapter, or when the Finance
217 Department finds that a return is not supported by the records to be maintained
218 pursuant to this chapter, the Finance Department may prepare and file a return on
219 behalf of the permittee. Involuntary returns filed under this section may be premised
220 upon any information that is available to the Finance Department, including, among
221 other things, a copy of the materials the applicant submitted to the Alaska Department
222 of Revenue in accordance with 15 AAC 61.010, and comparative data for similar
223 businesses. A permittee for whom an involuntary return is filed under this section shall
224 be subject to liability for the tax stated in the return, as well as subject to the penalties
225 and interest provided for in this chapter. A return prepared by the Finance Department
226 is prima facie, good and sufficient for all legal purposes. However, nothing prevents the
227 permittee from presenting evidence on appeal to rebut the presumed sufficiency of a
228 return prepared by the Finance Department, nor does the presumption of sufficiency
229 alter the parties' respective burdens of proof once the permittee has presented evidence
230 to rebut that presumption.

231 **4.27.130 Amended tax returns.**

232 A. Any tax return filed hereunder may be amended by the permittee within one year
233 after the due date of the tax return being amended. No amendment by the permittee
234 shall be allowed after this one-year period.

235 B. Any tax return prepared and filed by the Finance Department on behalf of the
236 permittee may be amended by the permittee within one year of the date filed by the
237 Finance Department. No amendment by the permittee shall be allowed after this one-
238 year period.

239 **4.27.140 Application of payments.**

240 Any payment submitted to the Finance Department for any taxes, penalties, interest, or
241 cost due under any provision of this chapter or any return or any finding or
242 determination by the Finance Department under this chapter shall be credited to the

243 monthly tax period for which it was remitted, first to the payment of costs and then to
244 penalties, interest, and taxes in that order.

245 **4.27.150 Prohibited acts and penalties.**

246 A. No person shall operate a marijuana cultivation facility within the city and borough
247 without complying with the provisions of this chapter.

248 B. A penalty of five percent of the taxes due shall be incurred automatically when a
249 person fails to pay the full amount of the tax due under this chapter within seven
250 calendar days following its due date. An additional penalty of five percent of the taxes
251 due shall be incurred automatically when a person fails to file a tax return by the end of
252 the month. Taxes more than one month late will be assessed an additional five percent
253 per month for each subsequent month, or part of a month, with the total penalty not to
254 exceed twenty-five percent.

255 1. The penalty shall be computed on the unpaid balance of the tax liability as
256 determined by the Finance Department.

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

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

263 C. If a properly filed amended return reduces the total tax liability or the tax required to
264 be paid, or the deterrment reduces the tax liability, the related penalty will be reduced
265 accordingly. If a properly filed amended return increases the total tax liability or the tax
266 required to be paid, the related penalty will be increased accordingly.

267 D. All penalties and remedies enumerated in this chapter are cumulative.

268 E. For good cause shown, the Municipal Administrator may waive or reduce all or part
269 of any penalty imposed under this subsection.

270 **4.27.160 Interest on unpaid tax.**

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

273 **4.27.170 Civil fraud.**

274 A. A civil fraud penalty may be assessed against a permittee in addition to a penalty for
275 failure to file or failure to pay.

276 B. If it is determined by the Finance Department that a tax deficiency or part of a tax
277 deficiency is due to fraud, then a penalty will be added to the tax. The penalty is fifty
278 percent of the deficiency due or \$500.00, whichever is greater. The penalty is computed
279 on the total amount of the deficiency due.

280 C. Fraud is the intentional misrepresentation of a material fact with the intent to evade
281 payment of tax which the permittee is believed to owe. The permittee, if an individual, or
282 the agent or representative of the permittee if an entity, (the "person") must have had
283 knowledge of its falsity and intended that it be acted upon or accepted as the truth.

284 D. To establish civil fraud, the Finance Department must prove by clear and convincing
285 evidence that:

286 1. The tax liability was understated; and

287 2. The understatement was the result of an intent to evade tax.

288 E. An intent to evade tax may be demonstrated by any relevant evidence, including but
289 not limited to the following:

290 1. The person has provided false explanations regarding understated or omitted
291 amounts of marijuana cultivated or transferred;

292 2. The person has provided falsified or incomplete source documents;

293 3. The person has not justified an omission or understatement of a significant
294 amount of marijuana cultivated or transferred; or

295 4. The person has substantially overstated a deduction and has failed to justify
296 the overstatement.

297 **4.27.180 Tax lien.**

298 A. If any permittee who is liable to pay a tax or permit fee under this chapter neglects or
299 refuses to pay the tax or permittee fee after demand, the amount, including interest,
300 additional amounts, or assessable penalty together with costs, is a lien in favor of the
301 city and borough upon all property and rights to property, real or personal, belonging to
302 that permittee.

303 B. The lien imposed by this section arises upon delinquency and continues until the
304 amount is paid or a judgment against the permittee arising out of the liability is satisfied.

305 C. A lien arising out of a tax due under this chapter, including the penalties and interest
306 on the tax, shall be prior, paramount, and superior to all other liens, mortgages,
307 hypothecation, conveyances, and assignments, upon all real and personal property of

308 the permittee liable for the tax and upon all the real and personal property used with the
309 permission of the owner to carry on the business which is subject to the tax.

310 D. The lien on personal and real property may be enforced in a manner similar to that
311 provided by AS 29.45.300 through 29.45.480 for enforcement of real and personal
312 property tax liens.

313 **4.27.190 Taxpayer, permittee, or other person remedies.**

314 A. Any permittee aggrieved by any action of the Finance Department in issuing,
315 suspending, revoking, or refusing to issue any permit under this chapter or in fixing the
316 amount of taxes, penalties, interest, or costs under this chapter may apply to the
317 Finance Department and request a hearing within 30 days from the date the Finance
318 Department mails the notice of the action in question. Upon timely application under this
319 subsection, the Municipal Administrator shall hold a hearing to determine whether a
320 correction is warranted. Hearings before the Municipal Administrator under this
321 subsection may, at the option of the Municipal Administrator, be conducted by an
322 administrative hearing officer designated by the Municipal Administrator. The hearing
323 officer shall conduct the hearing and prepare findings and conclusions. These findings
324 and conclusions must be forwarded to the Municipal Administrator for adoption,
325 rejection, or modification and issuance of a final order or decision by the Municipal
326 Administrator. An application for a hearing must notify the Finance Department of the
327 specific action complained of and amount of tax, interest, cost, or penalty contested and
328 the reason it is contested. After receipt of a written decision by the Municipal
329 Administrator, a permittee may appeal to the Superior Court of the First Judicial District
330 at Sitka in accordance with the Alaska Appellate Court rules. The permittee shall be
331 given access to the department's file in the matter for preparation of the appeal.

332 B. A request for appeal is filed on the date it is personally delivered or when delivered to
333 the Finance Department considered by the United States Postal Service, the date of the
334 postmark stamped on the properly addressed envelope in which the request is mailed. If
335 the due date falls on Saturday, Sunday, or a city and borough observed holiday, the due
336 date is the first business day thereafter. A current mailing address must be provided to
337 the Finance Department with the request for appeal, and any change in mailing address
338 after the request for appeal is filed must be reported to the Finance Department.

339 C. If the notice to the permittee pursuant to subsection of this section shows an amount
340 due, the uncontested portion of the amount due must be paid within 30 days after the
341 date of the notice. If the uncontested amount is not paid within 30 days, collection action
342 will be taken on that amount even if the permittee has filed a request for appeal.
343 Payment of the total amount due may be made any time before the hearing. If the
344 Finance Department has reason to believe that collection of the total amount due might
345 jeopardize by delay, immediate payment of the total amount will be demanded and the
346 Finance Department may pursue any collection remedies provided by law. Payment in
347 full does not affect the permittee's right to a hearing.

348 D. If a permittee requests a hearing and fails to appear at the hearing, the Municipal
349 Administrator or hearing officer may issue a decision without taking evidence from that
350 permittee, unless that permittee shows reasonable cause for failure to appear within
351 seven days after the date scheduled for the hearing.

352 E. Taxes, licenses fees, penalties and interest declared to be due in the final
353 administrative decision must be paid within 30 days after the date of the decision, or a
354 bond must be filed with the court in accordance with the Alaska Court Rules of
355 Appellate Procedures.

356 **4.27.200 Inspection and maintenance of documents and records.**

357 A. Marijuana cultivation facilities shall keep complete and accurate records to support
358 the information to be included in the monthly tax returns required by this chapter,
359 including information regarding transfers. The records must include an accounting that
360 inventories live plants, trimmings, and any dried product on the first and last day of each
361 month including an invoice, sales receipt or other record memorializing the transfer of
362 marijuana from a marijuana cultivation facility, which must separately state the amount
363 of tax due after the sale or transfer.

364 B. Any person selling marijuana at a retail marijuana store who cannot produce records
365 showing taxes were paid on any marijuana in their possession are secondarily liable for
366 the unpaid tax on marijuana.

367 C. Permittees subject to the chapter shall keep such other documents and records as
368 the Finance Department prescribes.

369 D. The Finance Department may, during business hours, enter the business premises
370 of a permittee under this chapter, so far as it may be necessary for the purpose of
371 examining such products and the related business records.

372 **4.27.210 Administrative regulations.**

373 The Finance Department may adopt policies and procedures providing for the
374 application and interpretation of this chapter and provide forms for reporting and
375 collecting the tax imposed by this chapter.

376 **4.27.220 Confidential and nonconfidential tax information.**

377 A. The following information is publicly available information:

378 1. Names and addresses of business owners who filed tax returns under this
379 chapter;

380
381 2. Whether a business is registered to collect taxes under this chapter in the city
382 and borough;
383

384 3. Whether a business is current in filing tax returns and in remitting tax due
385 under this chapter, and the number of returns not filed; and
386

387 4. Names of those businesses which have received an exemption from the city
388 and borough relating to taxes due under this chapter.
389

390 B. The city and borough may permit any authorized representative of any federal, state
391 or other local government agency to inspect and copy any tax returns filed and reports
392 prepared under this chapter, if the other governmental agency provides substantially
393 similar access to the city and borough and if the city and borough determines that other
394 governmental agency provides adequate safeguards for the confidentiality of the tax
395 returns and reports.
396

397 C. Except as otherwise provided in this section, tax forms and their contents shall be
398 confidential and shall not be disclosed by the Finance Department except:

399 1. In connection with efforts by the city and borough to collect the tax:
400

401 2. In response to a subpoena issued by a court, state agency or governmental
402 board or commission;
403

404 3. In connection with legislative inquiry specifically authorized by the assembly;
405

406 4. In connection with the city and borough audits for purposes of verifying city
407 and borough accounting practices; or
408

409 5. In compilation of statistics and studies by the Finance Department for public
410 distribution, so long as information from individual businesses is not identifiable
411 as to source.
412

413 **4.27.230 Use of Proceeds**

414 Proceeds from the collection of marijuana excise taxes shall be deposited into the
415 Activity and Health Fund of the Sitka School District. The purpose of this fund is to
416 provide funding for co-curricular activities within the Sitka School District. The Sitka
417 School District, at its sole discretion, shall fund co-curricular activities with these
418 proceeds as it deems appropriate.
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420 * * *

421
422 **5. EFFECTIVE DATE.** This ordinance shall become effective the day after the date of its
423 passage.
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425 **PASSED, APPROVED, AND ADOPTED** by the Assembly of the City and Borough of Sitka,
426 Alaska this 10th day of October, 2017.
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428

429

430

431

ATTEST:

432

433

434

Sara Peterson, CMC

435

Municipal Clerk

436

437

1st reading 9/26/17

438

2nd reading 10/10/17

Matthew Hunter, Mayor