

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"

**NOT INTRODUCED – PULLED BY THE SPONSORS**

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.

- 49           4.27.160 Interest on unpaid tax.
- 50           4.27.170 Civil fraud.
- 51           4.27.180 Tax lien.
- 52           4.27.190 Taxpayer, permittee, or other person remedies.
- 53           4.27.200 Inspection and maintenance of documents and records.
- 54           4.27.210 Administrative regulations.
- 55           4.27.220 Confidential and nonconfidential tax information.
- 56           4.27.230 Use of Proceeds.

57    **4.27.010 Applicability, purpose and authority.**

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

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

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

67    **4.27.020 Definitions.**

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

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

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

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

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

76    F. "Ownership change" means:

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

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

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

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

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

88 **4.27.030 Excise tax on marijuana.**

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

93 B. Marijuana Excise Tax.

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

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

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

104 **4.27.040 Exemptions.**

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

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

109 **4.27.050 Permit required – Issuance.**

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

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

116 1. The applicant's name and address;

117 2. The name under which the marijuana cultivation facility will operate;

118 3. A copy of the applicant's city and borough business license and state  
119 marijuana establishment license; and

120 4. Such other information that is indicated on the city and borough's application  
121 form.

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

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

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

129 1. The name and address of the permittee;

130 2. The type of business to be conducted;

131 3. The address at which the business is conducted; and

132 4. A permit number.

133 **4.27.060 Expiration of permits.**

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

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

138 **4.27.070 Ownership change to be reported.**

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

142 **4.27.080 Transfer of permit.**

143 A permit under this chapter is not transferrable, but instead expires upon the effective  
144 date of an ownership change. Not less than seven days before the effective date of an  
145 ownership change, the permittee shall provide written notice to the Finance Department  
146 of the same, which must include the name, address, type of organization, and  
147 jurisdiction of organization of the transferee, and surrender the permit to the Finance  
148 Department. The new owner may apply for a permit under this chapter.

149 **4.27.090 Refund or credit of tax.**

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

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

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

160 **4.27.100 Display of permit – Surrender of permit – Suspension or revocation of**  
161 **permit.**

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

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

165 1. A revocation of permit;

166 2. A cessation of business;

167 3. A change of ownership; or

168 4. A change of a place of business.

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

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

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

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

175 D. No marijuana cultivation facility whose permit is suspended or revoked shall plant,  
176 propagate, cultivate, harvest, trim, dry, cure, or package marijuana for transfer during  
177 the suspension or revocation. No disciplinary proceeding or action is barred or abated  
178 by the expiration, transfer, surrender, suspension, or revocation of a permit issued  
179 under this chapter.

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

184 **4.27.110 Tax returns.**

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

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

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

196 b. The name and address of the permittee;

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

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

200 e. The name under which the marijuana cultivation facility is being  
201 operated;

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

205 g. The amount of tax due; and

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

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

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

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

217 **4.27.120 Involuntary returns.**

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

233 **4.27.130 Amended tax returns.**

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

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

241 **4.27.140 Application of payments.**

242 Any payment submitted to the Finance Department for any taxes, penalties, interest, or  
243 cost due under any provision of this chapter or any return or any finding or  
244 determination by the Finance Department under this chapter shall be credited to the  
245 monthly tax period for which it was remitted, first to the payment of costs and then to  
246 penalties, interest, and taxes in that order.

247 **4.27.150 Prohibited acts and penalties.**

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

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

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

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

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

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

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

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

272 **4.27.160 Interest on unpaid tax.**

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



275 **4.27.170 Civil fraud.**

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

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

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

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

288 1. The tax liability was understated; and

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

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

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

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

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

297 4. The person has substantially overstated a deduction and has failed to justify  
298 the overstatement.

299 **4.27.180 Tax lien.**

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

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

307 C. A lien arising out of a tax due under this chapter, including the penalties and interest  
308 on the tax, shall be prior, paramount, and superior to all other liens, mortgages,  
309 hypothecation, conveyances, and assignments, upon all real and personal property of  
310 the permittee liable for the tax and upon all the real and personal property used with the  
311 permission of the owner to carry on the business which is subject to the tax.

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

315 **4.27.190 Taxpayer, permittee, or other person remedies.**

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

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

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

348 Finance Department may pursue any collection remedies provided by law. Payment in  
349 full does not affect the permittee's right to a hearing.

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

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

358 **4.27.200 Inspection and maintenance of documents and records.**

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

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

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

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

374 **4.27.210 Administrative regulations.**

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

378 **4.27.220 Confidential and nonconfidential tax information.**

379 A. The following information is publicly available information:

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

382

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

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

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

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

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

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

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

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

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

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

414  
415 **4.27.230 Use of Proceeds**

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

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422 \* \* \*

423  
424 **5. EFFECTIVE DATE.** This ordinance shall become effective the day after the date of its  
425 passage.  
426

427 **PASSED, APPROVED, AND ADOPTED** by the Assembly of the City and Borough of Sitka,  
428 Alaska this 10<sup>th</sup> day of October, 2017.

429  
430  
431

\_\_\_\_\_  
Matthew Hunter, Mayor

432  
433 ATTEST:

434  
435  
436 \_\_\_\_\_  
437 Sara Peterson, CMC  
438 Municipal Clerk

439 1<sup>st</sup> reading 9/26/17  
440 2<sup>nd</sup> reading 10/10/17