

**DENALI BOROUGH, ALASKA
ORDINANCE NO. 20-12
INTRODUCED BY: MAYOR CLAY WALKER**

**AN ORDINANCE ESTABLISHING AN ALCOHOL AND MARIJUANA
TAX IN THE DENALI BOROUGH**

BE IT ENACTED by the Assembly of the Denali Borough, Alaska that:

Section 1. Classification.

This ordinance is of a general and permanent nature

Section 2. Purpose.

The purpose of this ordinance is to amend the Denali Borough Code of Ordinances by creating Chapter 3.26 titled Alcohol and Marijuana Tax, as follows.

Section 3. Effective Date.

This ordinance becomes effective upon adoption on January 1, 2021.

**CHAPTER 3.26
ALCOHOL AND MARIJUANA TAX**

Sections:

- 3.26.010 Definitions.**
- 3.26.020 Purpose and intent.**
- 3.26.030 Imposition of alcohol and marijuana tax.**
- 3.26.040 Administration of tax.**
- 3.26.050 Tax exemptions.**
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- 3.26.090 Duty to file tax return and to transmit taxes to the borough.**
- 3.26.100 Confidentiality.**
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3.26.010 Definitions.

- A. "Administrative costs of collection" means the actual amount of attorney's fees, litigation costs, and other expenses incurred by the borough in collecting any taxes, interest, and/or penalties due under this chapter or in otherwise enforcing any provision of this chapter.
- B. "Alcohol" means a spirituous, vinous, malt, or other fermented or distilled liquid, whatever the origin, that is intended for human consumption as a beverage and that contains one-half of one percent or more of alcohol by volume.
- C. "Commencing operations" means the act of offering alcohol and marijuana to individual customers.
- D. "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.
- E. "Quarter" means the three-month periods ending on March 31st, June 30th, September 30th, and December 31st.
- F. "Retail sale" means the transfer of any alcoholic beverage to any consumer, for any consideration.
- G. "Vendor" means a person who offers for retail sale alcohol and/or marijuana.

3.26.020 Purpose and intent.

It is the purpose of the tax levied under this chapter to raise and diversify revenues. It is the intent of the tax levied under this chapter to support local non-profit organizations, local emergency services providers, volunteer fire departments, municipal assistance and major school maintenance projects. To that end, the scope of the tax levied by this chapter shall be broadly construed and exemptions shall be allowed only when the alcohol and marijuana retail sale clearly falls within one of the exemptions set forth at DBC 3.26.050.

3.26.030 Imposition of alcohol and marijuana tax.

The borough hereby levies a tax on the retail sale of alcohol and marijuana equal to five percent of the sale price charged for each alcohol and marijuana retail sale made within the borough. This tax is imposed upon all alcohol and marijuana retail sales unless the retail sale is specifically exempted per DBC 3.26.050.

3.26.040 Administration of tax.

The borough Mayor, or their designee, is responsible for the administration of alcohol and marijuana tax procedures.

3.26.050 Tax exemptions.

If any municipality within the borough imposes an equal or greater tax on the same item(s), that sale shall be exempt from the borough tax.

3.26.060 Registration required.

- A. It is unlawful to engage in business as a vendor without obtaining a certificate of registration under this section. Failure to comply will result in penalties per DBC 3.26.120.
- B. Every vendor offering retail sales of alcohol and marijuana shall file with the borough a registration application on a form prescribed by the borough prior to commencement of operation, but no later than 10 days after the date of commencing operations. Registration certificates will be valid for two years.
- C. Alcohol and marijuana registration forms are prescribed by the borough, and shall contain the following information:
 - 1. Dates of operation;
 - 2. Type of retail sales;
 - 3. Current contact information including mail, email, physical location and telephone;
 - 4. The name of the individual who serves as the applicant's primary point of contact.
- D. Upon receipt of a properly executed application, the borough shall issue a certificate of registration authorizing said vendor to collect the tax. The certificate shall also state the address of the business to which it is applicable, dates of operation and certificate expiration date. The certificate must be prominently displayed at the regular place of business named therein.
- E. The certificate of registration is not assignable and nontransferable. The vendor shall promptly surrender the certificate to the borough when the vendor permanently ceases to do business at the location named on the certificate. A vendor shall submit a new or updated application for other changes, such as business name changes, owner/vendor changes, change in business organization, and/or primary contact person. If the business is continued at the same location but there is a change in its name or form of organization, the vendor making such change shall, in addition to submitting a new application, surrender its existing certificate to the borough.
- F. The borough may revoke a certificate of registration if a vendor fails to comply with any of the provisions of this chapter.

- G. A vendor shall not sell alcohol and marijuana subject to the tax imposed by this chapter if the vendor does not possess a valid certificate of registration, or has had its certificate of registration revoked. A vendor that makes alcohol and marijuana retail sales subject to this tax without a valid certificate of registration, or under a revoked registration, is subject to the penalties and/or actions provided in DBC 3.26.120.
- H. Registration information is public information.

3.26.070 Title to taxes.

Title to taxes collected pursuant to this chapter shall vest in the borough upon collection by a vendor. Pending transmittal to the borough, every vendor has a fiduciary duty to the borough for these taxes. Every vendor shall segregate and identify the tax funds on its books and records as being held in trust for the borough.

3.26.080 Collection of alcohol and marijuana tax.

- A. Every vendor that makes a retail sale subject to taxation under this chapter shall collect the tax imposed by this chapter from the customer no later than the time at which the retail sale is complete. Taxes not collected when due are delinquent.
- B. Every vendor shall state the amount of tax due under this ordinance separately from all retail sales and other charges on any invoice or receipt given to a customer.

3.26.090 Duty to file tax return and to transmit taxes to the borough.

- A. Alcohol and marijuana tax returns shall be made on the forms prescribed by the borough for that purpose, and shall contain the following information:
 - 1. Total gross of alcohol and/or marijuana retail sales;
 - 2. The amount of tax due thereon under this chapter;
 - 3. Such other information and documentation as the borough may require.
- B. Every vendor making a retail sale of alcohol and marijuana in the borough in any quarter shall file a return and remit taxes due on or before the last day of the month following the end of the quarter. Should that day fall on a day the borough office is not open, the deadline will be extended to the next borough business day. Returns and taxes not received or postmarked by the due date will be deemed delinquent and subject to the penalties set forth at DBC 3.26.120. A vendor who makes no taxable retail sales in a given quarter for which they have registered shall nonetheless file a return with the borough which reports that no taxable retail sales were made.

- C. On or before the due date of the return for each quarter, every vendor shall transmit the taxes due on retail sales completed during that quarter to the borough. Regardless of whether a return has been filed, taxes due for a given quarter which are not transmitted on or before the due date of the return for that quarter are delinquent.
- D. Tax will be considered to have been timely remitted to the borough only when electronically transmitted, received in the borough office, or postmarked on or before the date on which the taxes are due.

3.26.100 Confidentiality.

- A. Registration information is public. Except as otherwise provided herein, all returns filed with the borough for the purpose of complying with the terms of this chapter and all data obtained from such returns are confidential and, to the extent permitted by Alaska law, shall be kept from inspection of any persons other than officers, agents, and employees of the borough; provided, however, that such returns and/or the information obtained therefrom may be discussed by the assembly in public session with the written consent of the vendors that have submitted them.
- B. In the course of a criminal or civil action to enforce any provision of this chapter, the borough may allege, prove, publish, and produce for any purpose any return and/or information previously filed with the borough. The borough may deliver to a vendor or their authorized representative a copy of any return filed by the vendor or on their behalf. The borough may also publish statistics concerning the information contained in returns if the publication is done in such a manner that the information contained in a particular return does not disclose the identity of any vendor who submits a return in accordance with this chapter.
- C. It is unlawful for any person to divulge to another any return or any information obtained from a return filed with the borough except as provided in this section.

3.26.110 Alcohol and marijuana tax audits.

- A. Record Keeping Required. Every vendor shall keep and preserve for a period of three years records of all retail sales completed, the amount of taxes collected, and such other books or accounts as may be necessary to determine the amount of tax for which the vendor is liable hereunder. Each vendor shall permit the borough or its agent to examine, inspect, and copy said records, books, and accounts at any reasonable time, at the vendor's place of business within the borough or the borough office, whichever is more convenient for the vendor.
- B. Compliance Audits. The borough reserves the right to conduct audits of compliance with borough tax code. In the event of an audit, borough requests for books, accounts or copies of specific records shall be in writing to the vendor and the vendor shall have 30 days to respond. All audits shall be performed by a professional auditor licensed as a certified public accountant in the state of Alaska and retained for that purpose.

C. Failure to Comply with Audit. Any vendor who fails to comply with the provisions set forth in this section may be subject to penalties. For the purpose of ascertaining the correctness of any return, or determining the amount of tax collected or which should have been collected by any vendor, the mayor or their agent may hold audits, investigations and hearings concerning any matters covered by this chapter, and may examine any relevant books, papers, records, accounts or memoranda of any such vendor, and may require the attendance of any person through issuance of a subpoena which shall be enforced under the Alaska Rules of Civil Procedure in the same manner as subpoenas issued by an officer or agency of the state.

3.26.120 Penalties and interest.

- A. Operating without a valid registration is subject to a penalty of \$250 per incident.
- B. Any failure to file a timely return and to transmit tax to the borough as required by this chapter shall be considered delinquent. A delinquent account shall be subject to penalties as follows:
 - 1. A penalty of \$250 for delinquencies of 30 days or less.
 - 2. A penalty of \$500 for delinquencies of 31 to 60 days.
 - 3. A penalty of \$1,000 for delinquencies of more than 61 days.
- C. Penalties are due immediately upon accrual and are delinquent thereafter.
- D. Vendors who fail to comply with audit provisions in this chapter may be assessed a penalty of \$150.00 per day commencing 31 days after receiving notice of intent to audit, or upon a specified audit date, whichever is later, until provisions have been satisfied.
- E. Any tax or penalty assessed that is delinquent for more than 90 days is subject to civil action per DBC 3.26.150.

3.26.130 Estimated tax

If the borough is unable to ascertain the tax due from a vendor because the vendor failed to file a quarterly return as required under this chapter, to remit collected taxes, to collect taxes, to keep accurate books, to allow inspection, or to maintain the records required by this chapter, or has falsified records, the borough shall estimate the tax due based on any available evidence. Notice of the borough's estimate shall be mailed to the seller. Unless the seller files an accurate monthly report covering the time period subject to the borough's estimate or files an appeal within 30 days of the mailing of the borough's estimate, the borough's estimate shall become final for the purpose of determining the seller's tax liability

3.26.140 Violations.

Any vendor who fails to collect or remit all or any portion of the tax provided for in this chapter, or fails or refuses to comply with the provisions of this chapter, is guilty of a violation.

3.26.150 Civil action authorized.

- A. The borough may institute a civil action, pursuant to AS 29.25.070, to enjoin a vendor from engaging in the retail sale of alcohol and marijuana in the borough until the vendor has registered. The borough may also recover from the vendor the civil penalty imposed by this section and the borough's administrative costs of collection incurred in enforcing this section.
- B. The borough may institute a civil action against a vendor to recover taxes which the vendor failed to collect, or which the vendor collected and failed to transmit to the borough, together with the penalties, interest, and administrative costs of collection imposed by DBC 3.26.120. In any such action, a tax return or estimated tax under DBC 3.26.130 shall constitute prima facie evidence of the amount of tax which was, or should have been, collected.
- C. The borough may institute a civil action against a vendor who fails timely to file a return in order to recover the penalties and administrative costs of collection imposed by this section.
- D. Pursuant to AS 29.25.070, the borough may institute a civil action against any person who violates a provision of this chapter. In addition to injunctive and compensatory relief, the borough may recover its administrative costs of collection and a civil penalty. The borough may bring an action to enjoin a violation or to recover a civil penalty notwithstanding the availability of any other remedy. Each day that a violation of this chapter continues constitutes a separate violation.

3.26.160 Tax lien.

- A. In addition to any other remedies and administrative procedures provided under this chapter, the borough may file a civil action against any seller and/or buyer for recovery of any tax, unremitted tax, penalties, interest, costs, and fees, that have not been paid or remitted when due. The borough must file any such civil action within six years of the date that such tax, unremitted tax, penalties, interest, costs, and fees were due under this chapter.
- B. Any tax, unremitted tax, penalties, interest, costs and fees that this chapter requires a seller and/or buyer to pay or remit shall constitute a lien in favor of the borough upon all assets, earnings, revenue, and property of such seller and/or 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 filed in the nearest recorder's office of the nearest recording district. Upon such filing, the lien is superior to all other liens except as otherwise provided by state or federal law.

3.26.170 Sale of business.

If any vendor sells their alcohol and marijuana business to another person or entity, the vendor shall file a final tax return and transmit all tax due within 30 days after the closing date of the sale.

3.26.180 Severability.

If a court of competent jurisdiction determines that any provision of this chapter or any application thereof to any person or circumstance is invalid, the remainder of this chapter and its application to other persons or circumstances shall not be affected thereby.

3.26.190 Appeal.

- A. A person aggrieved by the application or interpretation of any provision of this chapter shall appeal to the board of review per DBC 5.20.120.
- B. A person aggrieved by the final action of the borough may appeal to the superior court in the manner provided in DBC 5.20.130.

Section 5. Effective Date. This ordinance becomes effective upon adoption by the Denali Borough Assembly and signature of the Denali Borough Mayor.

DATE INTRODUCED: July 8, 2020
FIRST READING: August 5, 2020
PUBLIC HEARING: August 5, 2020

PASSED and APPROVED by the Denali Borough Assembly this 5th day of August, 2020.



Clay Walker, Mayor

ATTEST: 

Amber Renshaw, Borough Clerk

ABSENT: ZAPPONE, BOELSMA, HOLMES

