

**CITY OF UNALASKA
UNALASKA, ALASKA**

ORDINANCE 2017-04

**AN ORDINANCE AMENDING UNALASKA CODE OF ORDINANCES CHAPTER 6.40 -
SALES AND USE TAXES TO INCREASE THE RATE OF SALES TAX ON SALES OF
ALCOHOL, MARIJUANA, AND TOBACCO FROM THREE PERCENT (3%) TO SIX
PERCENT (6%)**

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF UNALASKA:

Section 1: **Classification.** This ordinance is a code ordinance.

Section 2: **Amendment of UCO §6.40.010.** Section 6.40.010 of the Unalaska Code of Ordinances is hereby amended to read as follows: [new language is underlined, deleted language is ~~overstruck~~]:

For the purposes of this Chapter, unless the context otherwise requires, the following words and phrases shall have the meanings defined herein.

(A) “ALCOHOLIC BEVERAGE” 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, whether produced commercially or privately.

~~(B)~~ “CONSUMER” means the person who, in the ordinary meaning of the term, takes title to, takes possession of, or rents property, or receives services for a consideration.

~~(B)~~ “MADE IN THE CITY” means:

- (1) A sale resulting from an offer being communicated from a seller to a consumer within the City and accepted by the consumer within the City; or
- (2) Services and rentals performed wholly within the City; or
- (3) Services and rentals performed partially within the City where the end result of the service or rental performed occurs in the City; or
- (4) Services performed outside the City in connection with construction of a structure or improvement to real or personal property located within the City.

Situations excluded are where separation of the goods from the stock of the seller takes place at the point of delivery and is outside the boundaries of the City, including such items as oil deliveries, telephone service, television service and electric power service.

(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.

(~~CE~~) “NEW RESIDENTIAL HOUSING” means that portion or portions of a building containing a newly created dwelling unit or units, as that term is defined in § 8.06.020, whether created by new construction or renovation. A boarding house, bunk house, group house, guest house or cottage, hotel, lodging house or motel, professional office, rest home, or rooming house as those terms are defined in § 8.06.020 shall not be considered new residential housing.

(~~DF~~) “OFFER” means any oral or written communication to a person making a presentation to buy or sell any goods or services or to rent any property.

(~~EG~~) “RENTING OR RENTAL OF PROPERTY” means a person using the property owned by another for a consideration.

(~~FH~~) “RESALE” OR “SALE FOR RESALE” means:

(1) A sale of personal property to a wholesale or retail dealer for the purposes of resale by that wholesale or retail dealer where the item is resold per se and is not for the wholesale or retail dealer's own consumption, use, storage or distribution and where the resale is subject to City sales tax;

(2) A sale of personal property as raw material to a person engaged in manufacturing for sale, where the personal property sold becomes an ingredient or component part of a product manufactured for sale by the manufacturer and where the sale of the manufactured product is subject to City sales tax;

(3) A sale of personal property as raw material to a licensed building contractor where the property sold becomes a component part of the product sold by that building contractor and where the sale of the product created by that building contractor is subject to City sales tax;

(4) A sale of services or rental of personal property other than meals, temporary lodging, utilities, vehicle rentals, fuel and other like items to a business, the charge for which will be separately identified on an invoice from that business to a specific buyer if: (i) the sale to the buyer is subject to City sales tax, or (ii) the resale transaction meets all other requirements and the buyer is a non-profit organization registered with the City of Unalaska, or an agency of the State of Alaska or the United States government.

(~~GI~~) “RETAIL SALE OR SALE AT RETAIL OR SALE” means every sale, lease, rental, transfer or assignment of any right, title or interest in any goods, personal property of any kind and whether tangible or intangible, real property and any provision of labor or services for a consideration made to a consumer in the regular course of business.

(~~H~~J) “SALE OF SERVICES” means the selling price received for furnishing labor and materials incidental to the labor required to install, construct, repair or complete specified results or end products. Descriptively, sale of services includes but is not limited to:

(1) The admission price charged for entering or staying in any place of entertainment including theaters, exhibitions, games, races where admission is by tickets, gate charges, seat charges, box charges, season pass charges, or cover charges.

(2) The selling price of subcontracts in building construction which shall be in addition to the total selling price set forth in the next subsection 3.

(3) The selling price of constructing buildings or other improvements to real estate.

(4) Commissions or fees by brokers or agents in such transactions as real estate sale.

(5) Furnishing advertising through the medium of newspapers and periodicals or radio and television broadcasting services except to recognized national agencies.

(6) Furnishing services of an insurance or bonding agency, the cost of which is not included in the premium price.

(7) Banking services such as rental of safety deposit boxes, services for handling loans, brokering loans and handling accounts, appraisal fees, and similar services.

(8) The provision of other services for fee such as accounting, hairdressing, barbering, janitorial, handyman, landscaping, freight forwarding, warehousing, repairs to real or personal property, lodging accommodations, and the furnishing of labor and materials for accomplishing a specific result.

Sale of services excludes wages, salaries and other forms of payment for labor performed for an employer.

(~~H~~K) “SELLER OR COLLECTOR” means every entity or person, whether acting as principal, agent, broker, or lessor, making sales at retail or rental of property to a consumer and who is required and responsible to collect and remit sales taxes levied by the City of Unalaska.

(~~J~~L) “SELLING PRICE” means the consideration, whether money, credit, rights or other property, expressed in the terms of money, paid or delivered by a consumer to a seller. Descriptively, selling price:

(1) Shall be without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, delivery costs, taxes or any other expenses whatsoever paid or accrued and without any deduction on account of losses.

(2) Includes any federal or state excise tax on the sale.

(3) Does not include the value of used articles intended for resale taken in trade as a credit or part payment on the sale of a new or used article. This amount shall be deductible from the total sales price of the new or used article being sold and the tax paid only on the net sales price.

(M) “TOBACCO” means cigarettes, cigars, tobacco, or other products containing tobacco, including all products the sale of which requires a state business license endorsement under AS 43.70.075.

Section 3: Amendment of UCO §6.40.020. Section 6.40.020 of the Unalaska Code of Ordinances is hereby amended to read as follows: [new language is underlined, deleted language is ~~overstruck~~]:

(A) Except as otherwise provided in this section, a sales tax is levied on all sales, rents and services made in the City at the rate of three percent (3%) of the selling price. The burden of this tax rests upon the consumer. This tax shall not be levied on raw seafood products taxed pursuant to Chapter 6.44. The tax on services shall not include salaries or wages received by an employee from an employer, but shall include consideration for furnishing labor and materials for accomplishing a specific result.

(B) A sales tax is levied on all sales of alcoholic beverage, marijuana, and tobacco occurring in the City at the rate of six percent (6%) of the selling price. The burden of this tax rests upon the consumer.

Section 4: Amendment of UCO §6.40.025. Section 6.40.025 of the Unalaska Code of Ordinances is hereby amended to read as follows: [new language is underlined, deleted language is ~~overstruck~~]:

(A) The amount of tax to be added to the lease, rental, transfer or assignment of any right, title or interest in any goods, personal property of any kind, real property and any provision of labor or services for a consideration subject to levy under §6.40.020(A) shall be in accordance with the following schedule:

<u>Price</u>	<u>Tax</u>
\$0.01 - \$0.30	\$0.01
\$0.31 - \$0.60	\$0.02
\$0.61 - \$1.00	\$0.03

(B) The amount of tax to be added to the sale, transfer or assignment of any right, title or interest in any goods, personal property of any kind, real property and any provision of labor or services for a consideration subject to levy under §6.40.020(B) shall be in accordance with the following schedule:

<u>Price</u>	<u>Tax</u>
<u>\$0.01 - \$0.15</u>	<u>\$0.01</u>
<u>\$0.16 - \$0.30</u>	<u>\$0.02</u>
<u>\$0.31 - \$0.45</u>	<u>\$0.03</u>

<u>\$0.46 - \$0.60</u>	<u>\$0.04</u>
<u>\$0.61 - \$0.85</u>	<u>\$0.05</u>
<u>\$0.86 - \$1.00</u>	<u>\$0.06</u>

Section 5: **Amendment of UCO §6.40.060(A).** Subsection 6.40.060(A) of the Unalaska Code of Ordinances is hereby amended to read as follows: [new language is underlined, deleted language is ~~overstruck~~]:

(A) A collector shall add the ~~three percent (3%)~~ sales tax levied in accordance with §6.40.020 to the selling price which the collector collects at the time of the sale or at the time of collection with respect to credit transactions. The tax is a debt from the consumer to the collector until paid and is recoverable at law in the same manner as other debts. Notwithstanding the liability of the consumer, taxes collected or which should have been collected by the collector under this Chapter are monies of the City for which the collector is at all times liable to the City.

Section 6: **Authorization of Election.** The City of Unalaska, at the October 3, 2017 municipal election, shall conduct an election on the question of whether there should be an increase of the sales tax rate for alcoholic beverage, marijuana, and tobacco by placing before qualified voters a proposition for approval or rejection. The City Clerk is directed to take all action necessary to arrange for this election. The proposition must receive a majority vote of those qualified voters actually voting on the question in order to be approved by the voters. The proposition shall be presented substantially in the following form:

PROPOSITION NO. 1

SHOULD THE CITY OF UNALASKA INCREASE THE RATE OF SALES TAX ON SALES OF ALCOHOLIC BEVERAGES, MARIJUANA, AND TOBACCO FROM THREE PERCENT (3%) TO SIX PERCENT (6%)?

The proposition shall be printed on a ballot and the following words shall be added as appropriate and next to a square or space provided for marking the ballot:

PROPOSITION NO. 1	Yes	(___)
	No	(___)

Section 7: **Effective Date.** Sections 2, 3, 4, and 5 of this ordinance shall become effective November 1, 2017 following certification by the City of Unalaska showing ratification by a majority of the qualified voters of the City of Unalaska voting at the election. The remaining sections shall be effective upon adoption.

PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE UNALASKA CITY COUNCIL THIS 14th DAY OF February, 2017.



HON. FRANK KELTY
MAYOR

ATTEST:

R. Winters *R. Winters*
CAT HAZEN *Acting City Clerk*
CITY CLERK



MEMORANDUM TO COUNCIL

TO: MAYOR AND CITY COUNCIL MEMBERS

THRU: DAVID MARTINSON, CITY MANAGER

FROM: ERIN REINDERS, ASSISTANT CITY MANAGER

DATE: JANUARY 24, 2017

RE: ORDINANCE 2017-03: AN ORDINANCE AMENDING UNALASKA CODE OF ORDINANCES TITLE 9 TO CREATE A NEW CHAPTER 9.24 FOR THE REGULATION OF MARIJUANA BUSINESS
ORDINANCE 2017-04: AN ORDINANCE AMENDING UNALASKA CODE OF ORDINANCES CHAPTER 6.40 - SALES AND USE TAXES TO INCREASE THE RATE OF SALES TAX ON SALES OF ALCOHOL, MARIJUANA, AND TOBACCO FROM THREE PERCENT (3%) TO SIX PERCENT (6%)

SUMMARY: Ordinances have been developed in accordance with the Council direction and consensus during several work sessions discussing the regulation of marijuana commerce. Staff recommends approval for Ordinance 2017-03 creating a new chapter 9.24 for the regulation of marijuana business, including buffer requirements from parks as well as hours of operation for marijuana retail establishments, and Ordinance 2017-04 amending chapter 6.40 to increase the rate of sale tax for alcohol, marijuana, and tobacco from 3% to 6%.

PREVIOUS COUNCIL ACTION: At the work session on October 25, 2016, the City Council expressed a desire to see this issue come forward to the Planning Commission to send a recommended ordinance to the Council for approval. The Planning Commission approved Resolution 2016-17 at their November meeting recommending Ordinance 2016-19 to the City Council. Council approved Ordinance 2016-19 at their December 27, 2016 meeting. Other regulatory issues, included size restrictions on grow facilities, limitations on product types, limitations on the number of businesses, hours of operation, sales tax, and additional buffer requirements were discussed in depth at the City Council work sessions throughout November and December. The ordinances being considered this evening have been developed in accordance with the direction and consensus gathered during those meetings.

BACKGROUND: On October 4, 2016, voters in Unalaska overturned the ordinance banning all commercial marijuana in Unalaska by referendum. Therefore, all commercial marijuana businesses are now legal in Unalaska. City Council is in the process of determining appropriate regulations for such businesses.

DISCUSSION: This evening, staff introduces two ordinances that have been developed in accordance with the Council's direction and consensus. Ordinance 2017-03 defines the regulations for marijuana business in Unalaska and the Ordinance 2017-04 increases the sales tax for marijuana, as well as alcohol and tobacco.

Ordinance 2017-03: The consensus of Council was to regulate marijuana business in a similar way as alcohol businesses are regulated where possible. The alcohol provisions of Chapter 9.20 in City Code

contain several regulatory provisions in addition to hours of operation for marijuana dispensing establishment. Ordinance 2017-03 has been drafted to create a new Chapter 9.24 which contains provisions mirroring the applicable provisions from the alcohol chapter, such as hours of operation, incorporating state law violations, inspection of licensed premises, and holding the licensee liable for the acts of employees. The ordinance specifically addresses the buffer requirements required by the state statute and includes facilities owned or managed by the Department of Parks, Culture, and Recreation in that list.

Ordinance 2017-04: The current sales tax rate in Unalaska is 3% and Alaska statutes allow for municipalities to place additional sales on marijuana subject to voter approval. Ordinance 2017-04 has been drafted to amend Chapter 6.40 to increase the sales tax for Alcohol, Marijuana and Tobacco from 3% to 6%. This ordinance also outlines the proposition language and effective date should the proposition pass. As drafted, the ordinance sets the question for the October 3, 2017 election, which should be certified by the Council no later than October 10, 2017, and then gives until November 1, 2017, before the increase is effective.

ALTERNATIVES: City Council may approve these ordinances as drafted, revise them to address specific concerns, or disapprove the ordinances.

FINANCIAL IMPLICATIONS: None that can be measured at this time.

LEGAL: These ordinances have been developed by the City Attorney.

STAFF RECOMMENDATION: Staff recommends approval for both Ordinance 2017-03 creating a new chapter 9.24 for the regulation of marijuana business and Ordinance 2017-04 amending chapter 6.40 to increase the rate of sale tax for alcohol, marijuana, and tobacco from 3% to 6%.

PROPOSED MOTION: I move to approve Ordinance 2017-03; I move to approve Ordinance 2017-04.

CITY MANAGER COMMENTS: These ordinances have been developed based on the direction received from Council. I support the approval of both Ordinance 2017-03 and Ordinance 2017-04.