

CODE ORDINANCE

Sponsored by: Assemblymember Kowalke

Introduced: 05/02/17

Public Hearing: 05/16/17

Amended: 05/16/17

Adopted: 05/16/17

Ratified by the voters: 10/03/17

**MATANUSKA-SUSITNA BOROUGH  
ORDINANCE SERIAL NO. 17-075**

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY ADOPTING MSB 3.70, SERVICE AREA SALES TAX, TO ADOPT A 3 PERCENT SALES TAX WITHIN SERVICE AREA NO. 36: TALKEETNA SEWER AND WATER SERVICE AREA.

WHEREAS, the intent and rationale for this ordinance is found in the Informational Memorandum accompanying this ordinance and the discussions of the Assembly at meetings in which it was considered.

BE IT ENACTED:

Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the Borough Code.

Section 2. Adoption of new chapter. MSB 3.70, Service Area Sales Tax, is hereby adopted to read as follows:

**Chapter 3.70 SERVICE AREA SALES TAX**

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**3.70.010 AUTHORITY.**

This chapter is adopted pursuant to the Alaska Constitution and Alaska Statutes.

**3.70.020 DEFINITIONS.**

When used in this chapter, the following words and phrases shall have the meanings set forth in this section:

"Buyer" means a person who acquires property, or the right to use or occupy property, or who receives a service, for consideration.

"Capital lease" also referred to as a financing lease, means a lease which is in substance a purchase and wherein substantially all of the risks and benefits of ownership are assumed by a lessee. A lease which meets any one or more of the following criteria shall be considered a capital lease:

(1) The lease transfers ownership of the leased property to the lessee by the end of the lease term.

(2) The lease contains a bargain purchase option or a purchase less than fair market value upon termination of the lease.

(3) The lease term is equal to 75% or more of the estimated economic life of the leased property.

(4) The present value at the beginning of the lease term of the minimum lease payments, excluding that portion of the

payments, equals or exceeds 90% of the fair value of the leased property.

"Delivery" means that goods have been placed within the buyer's control.

"Gaming property" means a right to participate in a game of chance regulated under Alaska Statutes Chapter 5.15, including without limitation a right to participate that is represented by a pull-tab, bingo card, or raffle or lottery ticket.

"Health care services" means services required in the course of mental or physical treatment of a human patient.

"Lease" means a contract permitting the use or occupancy of real or personal property for consideration.

"Other lease types" means any lease that is not a capital lease.

"Price" means the amount of money, and the fair market value of consideration other than money, that the buyer gives to the seller in exchange for property, the right to use or occupy property, or the rendering of services.

"Rental" means any transfer of the right to use or occupy property for consideration.

"Residential rentals" means rental of a dwelling designed for living or sleeping purposes.

"Sale" means any transfer of property for consideration.

"Sales tax" means the tax levied by this chapter.

"Seller" means a person who, as principal or agent, transfers property, or the right to use or occupy property, or provides a service, for consideration.

"Service" means any application of labor, skill, or knowledge to produce value in exchange for consideration, and may include the provision of property or the right to use or occupy property, but does not include services rendered to an employer by an employee. Service may include, but is not limited to:

(1) Professional, advertising, maintenance, recreation, amusement, and craftsman services.

(2) Services in which a product or sale of property may be involved, including personal property made to order.

(3) Utility services including but not limited to sewer, water, solid waste collection or disposal, electrical, telephone services and repair, natural gas, cable television, and internet services.

(4) The sale of transportation services originating inside the service area.

(5) Services rendered for compensation by any person who furnishes any such services in the course of the person's trade, business, or occupation including services rendered for

commission when the commission is paid on a service or product that has not been charged service area sales tax.

"Shipping and freight hauling services" means the service of transporting goods by means other than the United States Postal Service.

"Transaction" means any transfer of property, or the right to use or occupy property, or the rendering of a service, for consideration.

"U.S. postage" means the cost of mailing an item by the United States Postal Service.

**3.70.025 INTERPRETATION.**

(A) The tax levied by this chapter applies to all sales, rentals and services in the service area except those that this chapter expressly exempts from the tax.

(B) Exemptions from the tax levied by this chapter are to be construed narrowly.

**3.70.030 LEVY OF TAX.**

(A) Subject to the remainder of this chapter, a tax of 3 percent of the price is levied on all sales, rentals, and services made in Service Area No. 36: Talkeetna Sewer and Water Service Area.

**3.70.040 TRANSACTIONS IN THE SERVICE AREA.**

(A) The following rules determine whether a transaction is made within the service area:

(1) A sale or rental is made within the service area if delivery occurs in the service area, and the seller either:

(a) Maintains a place of business, or an agent or employee, in the service area; or

(b) Regularly or repeatedly promotes sales or rentals in the service area by means such as advertising, promotional events or solicitation of sales.

(2) A service is made within the service area if:

(a) All or a substantial part of the service is rendered in the service area; or

(b) The seller maintains a place of business, or an agent or employee, in the service area, the service benefits a person or property in the service area, and either the order for the service is received or solicited in the service area, or payment for the service is received in the service area.

(3) A rental or lease of real property is made in the service area if the real property is located in the service area. A rental or lease of personal property is made if delivery occurs in the service area or the property is located in the service area.

(4) A service involving the construction, repair, renovation, improvement, sale or rental of real property is made in the service area if the real property is located in the service area.

**3.70.045 RULES APPLICABLE TO PARTICULAR BUSINESSES OR OCCUPATIONS.**

(A) Real Estate Sales Commissions.

(1) Commissions on sales of real property located in the service area are subject to sales tax, regardless of the location of the person to whom the commission is payable.

(2) Commissions on sales of real property payable to a person who maintains an office in the service area are subject to sales tax, regardless of the location of the real property.

(B) Sales of Gaming Property. An amount equal to the gross receipts of the seller from sales of gaming property, less the cost of prizes awarded on each series, set of games, or contest for which gaming property has been sold, shall be subject to sales tax.

(C) Sales from Coin-Operated Machines. An amount equal to the gross receipts from each coin-operated machine that the seller operates in the service area, shall be subject to sales tax.

**3.70.050 EXEMPTIONS.**

(A) The following transactions are exempt from sales tax:



(1) Sales of real property and interests in real property.

(2) Casual and isolated sales, rentals or services, not made:

(a) In the ordinary course of business; or

(b) Pursuant to a business license; or

(c) By sellers representing themselves to be in the business of making such retail sales, rentals or services.

(3) Sales of securities, insurance and bonds of guaranty and fidelity.

(4) The following fees charged by banks, savings and loan associations, credit unions and investment banks:

(a) Fees associated with deposit accounts, including service fees, monthly account fees, non-sufficient funds (NSF) fees, and attachment fees.

(b) Fees for the purchase of bank checks, money orders, travelers checks, foreign currency and similar products for payments.

(c) Fees for, or commissions on, the sale, exchange or transfer of currency, stocks, bonds and other securities.

(d) Fees for the use of automatic teller machines and for transactions made through automatic teller machines, notary fees and overdraft protection fees.

(e) Loan transaction fees and escrow collection services.

(f) Safe deposit box rentals or fees.

(5) Contracts to transport elementary or secondary school students to and from school.

(6) Sales of food in lunchrooms or cafeterias in elementary, secondary or post-secondary schools that are operated primarily for the convenience of school students and faculty, and not operated for profit.

(7) Sales, rentals or services which the Borough is prohibited from taxing by the constitution or statutes of the United States or the State of Alaska.

(8) Sales of subscriptions to newspapers and other periodicals.

(9) Sales, rentals and services to the United States, the State of Alaska, and any of their agencies, instrumentalities, or political subdivisions.

(10) Dues or fees to nonprofit clubs, labor unions or fraternal organizations.

(11) Sales of admission to school entertainments, school athletic events, and events conducted for the benefit of charitable or community organizations. Retail sales by a school sanctioned activity group raising funds for its approved purpose. This exemption does not apply to sales of gaming property.

(12) Sales related to orbital space facilities, space propulsion systems, space vehicles, satellites or stations, to the extent of the exemption required by AS 29.45.650(h).

(13) All purchases made with (i) food coupons, food stamps, or other type of allotment issued under 7 USC 2011-2036 (Food Stamp Program); or (2) food instruments, food vouchers, or other type of certificate issued under 42 USC 1786 (Special Supplemental Food Program for Women, Infants or Children) are exempt. For purposes of this subsection, the value of a food stamp allotment paid in the form of a wage subsidy as authorized under AS 47.25.975(b), is not considered to be an allotment issued under 7 USC 2011-2036 (Food Stamp Program).

(14) Residential rentals for a term of 30 or more consecutive days.

(15) Child and adult daycare services, pre-elementary school and babysitting services.

(16) Sales of cemetery plots, caskets, funeral and burial related goods and services by a funeral home.

(17) Human health care services provided by a health care provider licensed by the State of Alaska under Title 8 of the Alaska Statutes, and sales of property and services pursuant to a prescription or written order from such a person.

(18) Sales and rentals of hearing aids, crutches, wheelchairs and personal apparatus specifically manufactured for a patient.

(19) U.S. Postage; and shipping and freight hauling services that originate in the service area but the end destination is outside service area limits.

(20) Assisted living services provided in accordance with an assisted living plan and in an assisted living home licensed as such by the State of Alaska.

(21) Sales of goods and services provided under a warranty or service contract, whether performed by the manufacturer or authorized representative of the manufacturer, and charged to a third-party warrantor for repairs, major maintenance, or both. The initial purchase of warranty or service contract would be taxed at the time of purchase. Any portion of repair paid by the customer through a deductible or other means would not be exempt under this section.

(B) The following transactions are exempt from sales tax; provided, that the buyer presents to the seller at the time of the

sale transaction a valid certificate of exemption applicable to the transaction, issued to the buyer under MSB 3.70.080:

(1) Sales to a dealer in the property sold, for the purpose of resale by the dealer.

(2) Sales of raw material to a manufacturer, which raw material becomes an ingredient or component part of a manufactured product or a container thereof, or is consumed in the manufacturing process.

(3) Sales of tangible personal property that either will be consumed in the course of construction or become part of real property, and rentals of equipment or services by a licensed contractor under Chapter 8.18 of the Alaska Statutes, to an owner of real property for use in the original construction of, or renovations to, improvements to the real property. This exemption does not apply to sales of tangible personal property, or rentals of equipment, that are to be used in repairing or maintaining real property.

(4) Sales of tangible personal property that either will be consumed in the course of construction or become part of real property, and rentals of equipment or services by a licensed contractor under Chapter 8.18 of Alaska Statutes, to a person licensed as a contractor under Chapter 8.18 of the Alaska Statutes for use in the original construction of, or renovations to,

improvements to real property. This exemption does not apply to sales of tangible personal property, or rentals of equipment, that are to be used in repairing or maintaining real property.

(5) Sales, rentals and services to a person that the Internal Revenue Service recognizes as an organization described in Section 501(c)(3), 501(c)(4) or 501(c)(19) of the Internal Revenue Code; provided, that the sale, rental or service is not for use in an "unrelated trade or business" of the person, as that term is defined in Section 513 of the Internal Revenue Code.

(6) Sales, rentals and services to a church that is organized as a nonprofit corporation under the laws of the State of Alaska.

(7) Sales of food supplies to food service establishments for incorporation into food products to be sold to the public.

(8) Sales of food supplies to hospitals, institutions housing six or more residents, and schools.

(9) Services sold for resale when the services are directly integrated into services or goods sold by the buyer located within the service area and registered with the sales tax administrator, to another purchaser in the normal course of business, provided that the services are purchased separately for

resale, and the services are identified, charged for and billed for separately without markup from any other services.

(C) The following transactions are exempt from sales tax; provided, that the seller has at the time of the transaction a valid certificate of exemption applicable to the sales transaction, issued to the seller under MSB 3.70.080:

(1) Sales, rentals and services by a person that the Internal Revenue Service recognizes as an organization described in Section 501(c)(3), 501(c)(4) or 501(c)(19) of the Internal Revenue Code; provided, that the sale, rental or service is not part of an "unrelated trade or business" of the person, as that term is defined in the Internal Revenue Code.

**3.70.080 CERTIFICATE OF EXEMPTION.**

(A) A person shall apply to the Finance Director for a certificate of exemption that is required for an exemption from sales tax under MSB 3.70.050(B) or (C) on a form approved by the Finance Director. The application shall be accompanied by any applicable fee that is required under subsection (B) of this section. The Finance Director may require additional information from the applicant as necessary to determine whether the application should be granted, including without limitation documentation of Internal Revenue Service recognition of the applicant as an exempt organization, or the organization of a

church as a nonprofit corporation under the laws of the State of Alaska. A certificate of exemption is issued for a calendar year, and expires on December 31st of the calendar year for which it was issued.

(B) Except as provided in this subsection, there shall be no additional charge for a certificate of exemption. The applicant shall pay the Borough:

(1) For a certificate of exemption issued under MSB 3.70.050(B)(3) for the calendar year, \$30.

(2) For a certificate of exemption issued under MSB 3.70.050(B)(4) for the calendar year, \$150.

(C) The Finance Director may revoke a certificate of exemption after notice to the holder of the certificate and a hearing, if the Finance Director finds that the holder of the certificate:

(1) Gave false information when applying for the certificate of exemption;

(2) Used the certificate of exemption in a transaction that was not exempt from sales tax under the exemption in MSB 3.70.050 for which the certificate was issued;

(3) Permitted use of the certificate of exemption by a person other than an authorized agent or employee of the holder of the certificate; or



(4) Ceases to be entitled to exemption from sales tax under the exemption in MSB 3.70.050, for which the certificate was issued.

(D) Prior to revocation of a certificate of exemption, the holder of the certificate shall be provided with notice of the alleged violation not less than 15 days prior to the proposed effective date of revocation of the certificate. The person or entity to whom the certificate was issued may request a hearing before the Manager or Manager's designee, who may be a Borough employee, regarding the alleged violation by filing a written request with the Borough prior to the effective date for revocation. If requested, the hearing shall be held within 20 days after the date of receipt of the request, and the certificate shall not be revoked prior to the date of hearing.

(E) A decision under subsection (D) of this section revoking a certificate of exemption may be appealed to the Superior Court for the State of Alaska, Third Judicial District at Palmer in accordance with the Alaska Appellate Rules of Procedure.

(F) If a certificate of exemption is revoked, a new certificate may not be issued to the same person or entity for a period of two years from the date of revocation.

**3.70.090 DETERMINATION WHETHER TRANSACTION IS EXEMPT.**

(A) A seller shall determine in the first instance whether a sale is exempt under this chapter. However, if a seller incorrectly determines that a sale is exempt, and does not collect the tax from the buyer, then the seller is liable to the Borough for the uncollected tax.

(B) If the seller determines that a sale is not exempt, but the buyer believes the sale to be exempt, then the buyer may protest the tax by paying the tax at the time of sale and filing a certificate of protest form with the Borough no later than 60 days after the date of sale. The seller shall collect the protested tax at the time of the sale.

(C) If the seller determines that a sale is exempt, the seller can request a determination on whether a sale is exempt by filing a certificate of protest form with the Borough, no later than 60 days after the date of sale. The seller shall continue to collect the tax at the time of sale until the seller receives a determination from the Borough.

(D) The Finance Director will rule on each protest by sending to the buyer or seller a written determination on the protest. If the protest is allowed, a refund of the sales tax paid will be remitted to the buyer with the determination.

(E) Either the buyer or seller may appeal the Finance Director's determination by requesting a hearing within 15 days after service of notification of the determination under subsection (D) of this section. A hearing requested shall be conducted before the Manager or the Manager's designee, who may be a Borough employee. After the hearing, the person conducting the hearing shall serve the decision on the protestor and Finance Director by delivering the notice to the protestor's address of record and the Finance Director's place of business.

(F) A decision under subsection (E) of this section may be appealed to the Superior Court for the State of Alaska, Third Judicial District at Palmer in accordance with the Alaska Appellate Rules of Procedure.

**3.70.100 COLLECTION OF SALES TAX, ADDITION AND SEPARATE STATEMENT; EXCEPTIONS.**

(A) The buyer shall pay sales tax to the seller at the time of payment for a sale, rental, or service subject to sales tax. The seller shall collect sales tax from the buyer at the time of payment for a sale, rental, or service subject to sales tax. The seller is responsible for remitting sales tax on all nonexempt sales to the Borough, regardless of whether the seller collects the sales tax from the buyer. The seller is liable for any sales

tax due because of the seller's incorrect determination of the sales tax rate to be applied.

(B) Except as provided in subsection (C) of this section:

(1) The seller shall add the sales tax to the price or charge for the sale, rental or service, showing the tax as a separate and distinct item on any receipt, invoice, statement of account, or other record of the transaction. The sales tax on more than one separately priced item may be shown as a total tax on the aggregate price of all items sold or rented, or services rendered, in a single transaction.

(2) The amount of sales tax to be added to the price of a sale, rental or service shall be determined in accordance with the following schedule:

<b>Price of sale, rental or service</b>	<b>Tax</b>
Under \$0.17	None
\$0.17 through \$0.50	\$.01
\$0.51 through \$0.83	\$.02
\$0.84 through \$1.16	\$.03
\$1.17 through \$1.50	\$.04
\$1.51 through \$1.83	\$.05
\$1.84 through \$2.16	\$.06

Price of sale, rental or service	Tax
\$2.17 through \$2.50	\$.07
\$2.51 through \$2.83	\$.08
\$2.84 through \$3.16	\$.09
\$3.17 through \$3.50	\$.10

Over \$3.50, continue on same scale.

(3) A seller may not assume, fail to add to the price or charge for a sale, rental or service, or refund to the buyer all or part of the sales tax, or advertise or represent to any person that the seller will do so.

(C) Sales tax on sales of gaming property and sales from coin-operated machines is not added to the sales price and collected with each transaction, but is computed and paid as provided in MSB 3.70.045.

**3.70.110 TITLE TO COLLECTED SALES TAX.**

Title to sales tax vests in the Borough upon collection by the seller. The seller holds collected sales tax in trust for the Borough, and is accountable to the Borough therefor.

**3.70.120 TAX RETURNS, CONTENTS, PENALTY FOR DELINQUENCY.**

(A) A seller shall prepare a sales tax return for each calendar month. The sales tax return shall state the total amount

of the seller's sales, rentals and services; the amounts of the seller's exempt and taxable sales, rentals and services; and the amount of sales tax that is due from the seller. The seller shall submit on or with the return such additional information as the Borough may require to determine the amount of sales tax due for the month. The seller shall prepare the return and remit sales tax to the Borough on the same basis, cash or accrual, that the seller uses in preparing its federal income tax return. The seller shall sign the return, and transmit the return, with the amount of sales tax that it shows to be due, to the Borough.

(B) A seller that filed or should have filed a sales tax return for any month during a Borough fiscal year ending on June 30 shall file a return for every month remaining in the fiscal year even though no tax may be due. The return shall show why no tax is due.

(C) A sales tax return, and the related remittance of sales tax, is due, and must be received by the Borough, not later than 5:00 p.m. on the last business day of the month immediately following the month for which the return was prepared. The failure of the U.S. Postal Service or any private delivery service to make timely delivery of a sales tax return or the related remittance of sales tax shall not excuse an untimely filing or remittance.

(D) Sales tax that is not received on or before the time when due is delinquent. Delinquent sales tax bears interest at the rate of 15% per annum until paid. In addition, delinquent sales tax shall be subject to a late payment penalty equal to 5% of the amount of the delinquent sales tax multiplied by the number of calendar months (or portions thereof) that elapse until the delinquent sales tax, interest and penalty are paid in full; provided, that the amount of penalty shall not exceed 25% of the amount of the delinquent sales tax. The penalty does not bear interest.

(E) The Finance Director may require a seller that fails to submit a sales tax return or remit taxes when due to submit tax returns and remit taxes more frequently than monthly.

### **3.70.125 APPLICATION OF SALES TAX PAYMENTS.**

(A) Except as this section provides otherwise, payments on sales tax accounts shall be applied to the amount due for each calendar month, in chronological order, and within the amount due for each calendar month first to fees, accrued penalty, accrued interest and then to sales tax payments owed by the seller.

(B) Payments on sales tax accounts submitted with sales tax returns shall be applied to the most current return period, first to fees, accrued penalty, accrued interest and then to sales tax

payable under the return. Any remaining moneys shall be applied as provided in subsection (A) of this section.

(C) Amounts of delinquent sales tax, interest, penalty or fees that have been reduced to judgment, are the subject of a confession of judgment, or are the subject of a written payment agreement between the Borough and the seller are payable as provided in the judgment, confession of judgment or payment agreement, respectively, and, except as provided otherwise in the judgment, confession of judgment or payment agreement, thereafter cease to be subject to the further accrual of interest or penalty under this chapter.

### **3.70.128 DEDUCTION OF BAD DEBTS.**

(A) A person filing a return under MSB 3.70.120, may deduct sales found to be worthless. The bad debt may be deducted when it meets the following:

- (1) The sales tax was paid on an accrual basis; and
- (2) Is written off as uncollectible in the person's books and records; and
- (3) Qualifies as a deduction for federal income tax purposes under the Internal Revenue Code of 1986.

(B) If the amount of bad debt exceeds the amount of taxable sales during the period that the bad debt is written off, a person may file a refund claim with the Borough.



(C) If a bad debt deducted under subsection (A) of this section is subsequently collected, the person who claimed the deduction shall pay the tax levied under MSB 3.70.030, on the amount collected. For purposes of this subsection, any payments made on a debt or account are applied:

(1) First to the taxable price of the property or service and the tax levied under MSB 3.70.030, on the property or service; then

(2) To interest, service charges, and any other charges.

**3.70.130 DUTIES UPON CESSATION OR TRANSFER OF BUSINESS.**

(A) A seller that ceases to engage in business in the service area without a transfer of the business shall file with the Borough a final sales tax return, and remit any sales tax due, for the period ending on the date that the seller ceases to engage in business in the service area, not later than 15 days after that date.

(B) A seller that transfers its business in the service area shall provide the transferee with written notice of the transferee's obligations under subsection (C) of this section not less than 15 days before the effective date of the transfer, but neither the seller's failure to give the notice nor the transferee's failure to receive the notice shall relieve the

transferee of any such obligation. The seller shall file with the Borough a final sales tax return, and remit any sales tax due, for the period ending on the effective date of the transfer, not later than 15 days after the effective date, and provide a copy of the return to the transferee. The seller shall file with the final sales tax return proof that it provided the transferee with the written notice described in the first sentence of this subsection.

(C) The transferee of a business, with written consent of the owner, shall obtain from the Borough before the effective date of the transfer an estimate of the delinquent sales tax, penalty and interest, if any, owed by the seller as of the date of the transfer, and shall withhold that amount from the consideration payable for the transfer, until the seller has produced a receipt from the Borough showing that all tax obligations imposed by this chapter have been paid. A transferee that fails to withhold the amount required under this subsection shall be liable to the Borough for the lesser of the amount of delinquent sales tax, penalty and interest due from the seller as of the date of transfer, and the amount that the transferee was required to withhold.

(D) In subsections (B) and (C) of this section, the term "transfer" includes the following:

(1) A change in voting control, or in more than 50% of the ownership interest in a seller that is a corporation, limited liability company or partnership;

(2) A sale of substantially all of the assets used in the business of the seller; and

(3) The initiation of a lease, management agreement or other arrangement under which another person becomes entitled to the seller's gross receipts from sales, rentals or services.

**3.70.140 AMENDED RETURNS.**

(A) A seller may file with the Borough an amended sales tax return with supporting documentation, and the Borough may accept the amended return, but only in the following circumstances:

(1) The amended return is filed within one year of the original due date for the return; and

(2) The seller provides a written justification for amending the return; and

(3) The seller held a current Borough business license for the period for which the amended return was filed and filed an original return for that period; and

(4) The seller agrees to submit to an audit upon request of the Borough.

(B) The Borough shall notify the seller in writing if it rejects an amended return, including the reasons for any rejection.

**3.70.145 REFUNDS.**

(A) No sales tax refund shall be made unless the claimant complies with the requirements to obtain a sales tax refund set out in this section.

(B) A claim for refund of sales taxes paid for exempt sales shall be denied unless the claimant complies with MSB 3.70.140.

(C) A claim for refund of sales taxes over collected in error is barred unless:

(1) The claimant files a claim for refund with the Borough within one year of the date of sale, on the form prescribed by the Borough; and

(2) If the claimant is a seller, and the tax refund is owed to any buyer, the seller submits, and the Borough approves, a refund plan to all affected buyers.

(D) A claim for refund overpaid in error because of a mistake on the face of a sales tax return is barred unless:

(1) The claimant files a claim for refund within one year of the due date of the return, on the form prescribed by the Borough; and

(2) The claimant files an amended return pursuant to the requirements of this chapter.

(E) When the Borough initiates an audit or estimate pursuant to MSB 3.70.170, the period for claiming a refund under subsections

(C) and (D) above, is the same as the period under audit, but in no case more than three years from the date of sale.

(F) The Borough shall not be liable for interest on any refund claimed or paid, or for any costs incurred by a buyer or seller in claiming or obtaining a refund.

**3.70.150 EXTENSION OF TIME, WAIVERS, FORGIVENESS.**

(A) Upon written application of a seller, stating the reasons therefor, the Finance Director may extend the time to file a sales tax return, if the Finance Director finds each of the following:

(1) For reasons beyond the seller's reasonable control, the seller has been unable to maintain in a current condition the books and records that contain the information required to complete the return; and

(2) The seller has a reasonable plan to cure the problem that caused the seller to apply for an extension, the seller will commence and proceed with diligence to cure the problem, and the problem will be cured within a reasonable time; and

(3) At the time of the application, the seller is not delinquent in filing any other sales tax return or in remitting sales tax to the Borough.

(B) A penalty and/or fee assessed under MSB 3.70.120(D) for the delinquent remittance of sales tax or under MSB 3.70.180(F)

for failure to file a sales tax return may be waived by the Finance Director, upon written application of the seller accompanied by a payment of all delinquent sales tax, interest, penalty and/or fee otherwise owed by the seller to the Borough, within 45 business days of the assessment of the penalty and/or fee. A seller may not be granted more than one waiver of penalty and/or fee under this subsection in any period of 24 consecutive months. The Finance Director shall report all such waivers of penalty and fees to the council in writing, at least once each calendar quarter.

(C) The Manager or the Manager's designee, who may be a Borough employee, may forgive the payment of uncollected sales taxes, interest and penalty thereon, and penalties for failure to file owing by a seller to the Borough upon a determination by the Manager or Manager's designee that:

(1) Such uncollected sales taxes have never been collected by a substantial portion of a clearly definable class of seller; or

(2) Such uncollected sales taxes have never been collected on a substantial portion of a clearly defined class or type of transaction or service; or

(3) A reasonable interpretation and reliance upon that interpretation results in failure to collect a sales tax, which

collection is later determined to have been legally required under this chapter.

(D) The Manager or Manager's designee shall notify the Borough Assembly and Mayor in writing of any such incidence of forgiveness.

**3.70.160 USE OF INFORMATION ON TAX RETURNS.**

(A) Except as otherwise provided in this chapter, all returns, reports and information required to be filed with the Borough under this chapter, and all information contained therein, are exempt from the disclosure requirements of MSB 1.50, and shall be kept confidential and shall be subject to inspection only by:

(1) Employees and agents of the Borough whose job responsibilities are directly related to such returns, reports and information;

(2) The person supplying such returns, reports and information;

(3) Persons authorized in writing by the person supplying such returns, reports and information; and

(4) The Borough's attorneys.

(B) The Borough will release information described in subsection (A) of this section pursuant to subpoena, order of a court or administrative agency of competent jurisdiction, and where otherwise required by law to do so.

(C) Notwithstanding subsection (A) of this section, the following information is available for public inspection:

(1) The name and address of a person who holds a current Borough business license; and

(2) Whether a holder of a Borough business license is more than 30 days delinquent in filing a return or remitting sales tax; and, if so, the number of returns not filed.

(D) The Borough may publish the name of any seller that is delinquent in remitting sales tax, and the delinquent amount thereof. The Borough also may provide the public statistical information related to sales tax collections, provided that no information identifiable to a particular seller is disclosed.

**3.70.170 TAX RECORDS, ADDITIONAL INFORMATION FROM SELLER, AUDITS.**

(A) A seller shall maintain records of transactions supporting the information that the seller submits on sales tax returns, including without limitation records of daily gross receipts from sales, rentals and services, invoices of purchases and sales, bills of lading and bills of sale. A seller shall also maintain records of transactions that are exempt from sales tax, including information that will substantiate the claim of exemption. The seller shall maintain all such records for a period not less than three years after the date of payment of the sales tax to which they pertain, except to the extent that the Borough



has authorized in writing their destruction or disposal at an earlier date.

(B) If insufficient detail exists within a seller's business records to substantiate retail sales exemptions, such sales will be reclassified as taxable sales and subject to sales tax collection and remittance.

(C) The seller shall immediately notify the Borough of any fire, theft or other casualty which prevents the seller's compliance with this chapter. The casualty constitutes a defense to any penalty and/or fee provided in this chapter if determined to be the proximate cause of the failure to comply for a given reporting period, but does not excuse the seller from liability for taxes due. Accidental loss of funds or records is not a defense against the penalties and/or fees of this chapter.

(D) Any seller who has established a sales tax account with the Borough, who is required to collect and remit sales tax under MSB 3.70.100, or who is required to submit a sales tax return under MSB 3.70.120, is subject to a discretionary sales tax audit at any time. The purpose of such an audit is to examine the business records of the seller in order to determine whether appropriate amounts of sales tax revenue has been collected by the seller and remitted to the Borough.

(E) The Finance Director shall be responsible for selecting the particular sellers whose business records will be audited.

(F) Sales tax audits of seller's business records may be accomplished by either an employee of the Finance Department or by an individual or firm under contract with the Borough. The Borough may use sampling principles or methods in lieu of 100% examination of records in conducting a sales tax audit.

(G) Sellers selected for a sales tax audit will be notified by letter and will be required to meet with, and make available for inspection and copying, all pertinent business records including income tax returns that may be requested for the prior three years for examination, to the Finance Department employee, or contractor conducting the audit, within 30 days of notification. Under extenuating circumstances, the Finance Director may grant an extension of time for compliance.

(H) After completion of a sales tax audit, sellers subject to the audit will be notified of the results of the audit by letter. If the audit resulted in an additional sales tax liability to the Borough, the additional sales tax, with interest assessed retroactive to the date the sales tax was due, must be remitted to the Borough within 30 days after the receipt of the letter, or the additional sales tax will be subject to the procedures on delinquencies outlined in MSB 3.70.120. If the audit has resulted

in a refund due to the seller, the refund outlined in MSB 3.70.145, will be sent to the seller within 30 days.

**3.70.180 ESTIMATED TAX.**

(A) If a seller fails to file a sales tax return, or if the Borough has reasonable cause to believe that any information on a sales tax return is not accurate, the Borough may estimate the sales tax due based on any information available.

(B) The Borough shall notify the seller in writing that the Borough has estimated the amount of sales tax that is due from the seller under subsection (A) of this section, stating the estimated amount. The Borough shall serve the notice on the seller by delivering the notice to the seller's place of business, or by mailing the notice by certified mail, return receipt requested, to the seller's last known mailing address.

(C) The Borough's estimate of the amount of sales tax that is due from a seller shall become a final determination of the amount that is due unless the seller, within 15 days after service of notice of the estimated sales tax, gives the Borough a written request for a hearing.

(D) A hearing requested under subsection (C) of this section shall be conducted before the Manager or the Manager's designee, who may be a Borough employee. At the hearing, the seller shall have the burden of proving, by testimony or documentary evidence,

that the amount of sales tax that is due is less than the amount that the Borough estimated. After the hearing, the person conducting the hearing shall issue a decision determining the amount of sales tax that is due from the seller. The Borough shall serve the decision on the seller by delivering the notice to the seller's place of business, or by mailing the notice by certified mail, return receipt requested, to the seller's last known mailing address.

(E) A decision under subsection (D) of this section determining the amount of sales tax that is due may be appealed to the Superior Court for the State of Alaska, Third Judicial District at Palmer in accordance with the Alaska Appellate Rules of Procedure.

(F) The amount of sales tax finally determined to be due under this section shall bear interest and penalty as provided in MSB 3.70.120, from the date that the sales tax originally was due, plus an additional civil penalty of \$250 for each calendar month for which the amount of sales tax that is due has been determined.

**3.70.190 VIOLATIONS, REMEDIES.**

(A) Each of the following is a violation of this chapter:

(1) A buyer failing to pay sales tax to a seller as required by this chapter.

(2) A seller failing to collect sales tax from a buyer as required by this chapter.

(3) seller failing to file a sales tax return or remit sales tax when due.

(4) A buyer or seller knowingly submitting false information in a document filed with the Borough under this chapter.

(5) A seller falsifying or concealing information related to its business activities in the Borough for the purpose of avoiding payment of sales tax.

(6) A seller failing to permit the Borough to inspect records of the seller as required by this chapter.

(7) A seller failing to maintain records as required by this chapter.

(8) A buyer giving false information when applying for a certificate of exemption, or using a certificate of exemption in a transaction that was not exempt from sales tax under the exemption for which the certificate was issued.

(9) A seller failing to notify a transferee of the seller's business of the transferee's withholding obligation under MSB 3.70.130(C), or the transferee failing to withhold the amount required by MSB 3.70.130(C).

(10) A person causing or permitting a corporation of which the person is an officer or director, a limited liability company of which the person is a member or Manager, or a partnership of which the person is a partner, to commit a violation of this chapter described in subsections (A)(1) through (9) of this section.

(B) A person who is convicted of a violation of this chapter described in this section shall be subject to a fine of not more than \$1,000 plus any surcharge required to be imposed by AS 29.25.074.

(C) Each act or omission in violation of this chapter, and each day in which the act or omission occurs, is a separate violation of this chapter.

(D) A seller that fails to file a sales tax return or remit sales tax when due, in addition to any other liability therefor imposed by this chapter, shall pay to the Borough all costs incurred by the Borough to determine the amount of the seller's sales tax liability or to collect the sales tax, including without limitation costs of obtaining, reviewing and auditing the seller's business records, collection agency fees, and actual reasonable attorney's fees.

(E) A person who causes or permits a corporation of which the person is an officer or director, a limited liability company

of which the person is a member or Manager, or a partnership of which the person is a partner, to fail to collect sales tax or to remit sales tax to the Borough as required by this chapter shall be liable to the Borough for the amount that should have been collected or remitted, plus any applicable interest and penalty.

(F) Pursuant to AS 29.45.650, there is created a lien on the real and personal property of a seller to secure the payment of sales tax, interest, penalty and costs of collection. The Finance Director shall cause notice of the lien to be recorded with respect to the property of a seller when the Finance Director finds that the seller is delinquent in remitting sales tax to the Borough. The notice shall state the name of the seller; the amount of delinquent sales tax, interest, penalty and cost of collection owed by the seller as of a specified date; and that interest, penalty and costs will continue to accrue until payment is made. Within 10 days after recording the notice, Borough shall mail a copy of the notice by certified mail, return receipt requested, to the last known address of the seller; provided, that failure of the Borough to mail the notice or of the seller to receive it shall not affect the validity or priority of the lien.

(G) The Borough may bring a civil action to:

(1) Enjoin a violation of this chapter. On application for injunctive relief and a finding of a violation or threatened violation, the superior court shall enjoin the violation.

(2) Collect delinquent sales tax, penalty, interest, fees and costs of collection, either before or after estimating the amount of sales tax due under MSB 3.70.180.

(3) Recover a civil penalty of \$1,000 for each violation of this chapter.

(4) Foreclose a recorded sales tax lien as provided by law.

(H) All remedies for violations of this chapter are cumulative and are in addition to any others existing at law or in equity.

### **3.70.200 REGULATIONS.**

The Finance Director may adopt, amend and repeal regulations to implement, interpret or make specific the provisions of this chapter, or prescribe forms to be used under this chapter.

### **3.70.210 TAX LIMIT EXEMPTION, USE OF SALES TAX.**

(A) All taxes levied and collected under this chapter are exempt from the requirements of MSB 3.04.075, Tax Levy Limitation, and shall not be included in any calculations under MSB 3.04.075.



(B) All taxes levied and collected under this chapter may only be used to finance the special services and service related capital improvements for the service area.

**3.70.215 PROTEST.**

(A) A seller disputing the amount of the estimate, or the results of an examination or audit under MSB 3.70.170, may do so by filing a protest with the Borough's Finance Director within 30 days of the date of the notice of estimated tax or results of an audit or examination. The protest must set forth:

(1) The seller's justification for reducing or increasing the estimated tax amount, including any missing sales tax returns for the periods estimated; or

(2) The seller's reasons for challenging the examination or audit results.

(B) Upon receipt of a protest filed under subsection (A) of this section, the Finance Director shall process the protest.

(C) The Finance Director or designee, who may be a Borough employee, shall advise the seller of a date certain for an informal meeting or hearing with the seller and shall informally review the protest, make written findings and state reasons for the decision. No later than the first business day following the written decision, the Finance Director or designee shall mail the decision to the seller by certified mail, return receipt requested, to the

last known mailing address of the seller. The written decision shall be maintained by the Finance Director in accordance with the Borough's records management policy.

(D) The seller may appeal the written decision under subsection (C) of this section to the Borough Manager pursuant to MSB 3.70.220, within 15 business days from the date of mailing the written decision. Failure of the seller to appeal the decision shall be deemed to be a waiver of any right to appeal such decision.

**3.70.220 APPEAL.**

(A) Appeals filed under this section shall be heard by the Borough Manager or designee, who may be a Borough employee. The Borough Manager or designee shall hear and decide on appeals from a decision of the Finance Director or designee on the results of a sales tax audit pursuant to MSB 3.70.170.

(B) The appellant affected by a decision of the Finance Director or designee on the results of a sales tax audit pursuant to MSB 3.70.170, may appeal the decision to the Borough Manager by filing an appeal with the Borough Manager within 15 business days from the date of decision. The appeal shall state with specificity the grounds for the appeal and include contact information for the appellant or the appellant's representative.

(C) *Hearing.* The Manager or designee shall conduct a hearing on the appeal no more than 60 days after the appeal application is

filed. Records and proceedings before the Manager or designee shall be confidential and are not open to the public. The records related to the proceedings shall be maintained by the Manager in accordance with the Borough's records management policy.

(D) The Manager or designee may order that the Borough compromise and abate penalties and/or interest and fees, and/or negotiate and enter into payment plans for delinquent sales taxes, penalties, and/or interest and fees. The decision of the Manager or designee shall be in writing and sent to the appellant on the first business day following the decision.


(H) A decision under subsection (G) of this section may be appealed to the Superior Court for the State of Alaska, Third Judicial District at Palmer in accordance with the Alaska Appellate Rules of Procedure.

Section 3. Effective date. This ordinance shall take effect on January 1, 2018, only if the ballot proposition contained in Ordinance Serial No. 17-074 (Talkeetna Sewer and Water Service Area Sales Tax Ballot Proposition) is approved by a majority of the qualified voters voting on the proposition at the regular Borough election on October 3, 2017.

ADOPTED by the Matanuska-Susitna Borough Assembly this 16 day  
of May, 2017.

  
VERN HALTER, Borough Mayor

ATTEST:

  
LONNIE R. McKECHNIE, CMC, Borough Clerk  
(SEAL)

PASSED UNANIMOUSLY: Sykes, Beck, McKee, Mayfield, Doty, and  
Kowalke