

SUBJECT: AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY ADOPTING MSB 1.10.170 AND MSB 3.35, 1.5 PERCENT AREAWIDE SALES TAX FOR TRANSPORTATION SYSTEMS PROJECTS, IMPLEMENTING A 1.5 PERCENT SALES TAX WITHIN THE ENTIRE MATANUSKA-SUSITNA BOROUGH BEGINNING ON JULY 1, 2022 FOR A PERIOD OF FIVE YEARS, OR UNTIL \$73,685,000 IS COLLECTED, WHICHEVER IS EARLIER, AND THEN EXPIRE, AND SUBMITTING THE PROPOSITION TO THE VOTERS AT THE NOVEMBER 2 2021, REGULAR BOROUGH ELECTION.

AGENDA OF: July 20, 2021

ASSEMBLY ACTION:

OR 21-076 was amended & adopted with  
Assembly member McKee opposed  
OR 21-077 was postponed indefinitely 8-17-21  
BSM

MANAGER RECOMMENDATION: Introduce and set for public hearing.

APPROVED BY MICHAEL BROWN, BOROUGH MANAGER: MB

Route To:	Department/Individual	Initials	Remarks
	Originator	NS	for Borough Manager by Assembly direction
	Finance Director	CK	
	Borough Attorney	MB	
	Borough Clerk	7/13/21 JMM	

ATTACHMENT (S) : Fiscal Note: YES X NO         
Ordinance Serial No. 21-077 (49 pp)

**SUMMARY STATEMENT:** This ordinance is sponsored by the Borough Manager by Assembly direction after discussions at the June 22, 2021 Special Borough Assembly meeting relating to areawide transportation systems projects. This ordinance will allow the Borough to levy a 1.5% Areawide Sales Tax for Transportation Systems projects within the entire Matanuska-Susitna Borough. The sales tax will take effect on July 1, 2022 and expire after five years, or when \$73,685,000 is collected, whichever occurs first. The intent would be to use the entire amount of sales tax collected to pay for areawide transportation systems projects, subject to annual appropriation by the borough assembly.

State law allows the Matanuska-Susitna Borough to institute a sales tax, but requires that it be approved by the voters before it can take effect.

With the current uncertainty regarding the fiscal condition of the State of Alaska, it is prudent to diversify the sources of tax revenue to the Matanuska-Susitna Borough so that real property taxpayers do not continue to shoulder the tax burden imposed by the continuing need for public infrastructure. This includes the proposed 2021 Transportation Systems Projects (Ordinance 21-076 and IM 21-155).

The proposal that this sales tax expire after five years or \$73,685,000 is collected, is intended to demonstrate to the voters that this tax will not be ongoing or perpetual. Sometimes, there can be a concern that a tax designed to be temporary will ultimately become permanent. That cannot happen with this sales tax because of the way the ballot question is written. If a future Assembly decides to try to renew or extend this sales tax, or establish a new sales tax, it will be subject to additional future voter approval.

The sales tax proposal here largely mirrors the sales tax currently levied within the cities and the Talkeetna Sewer & Water Service Area. This means that the administration of the tax will not be something new, unusual, or unique.

Of note, MSB 3.35.040 will require taxation of all sales and rentals delivered into the Matanuska-Susitna Borough if the seller is not located in the Borough but provides goods or services over \$100,000 annually or conducts more than 200 transactions annually in the Borough. In 2018, the United States Supreme Court ruled that a business does not have to be physically located in a State to satisfy the demands of due process, which requires that there be some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax. See South Dakota v. Wayfair, Inc., 138 S.Ct. 2080 (U.S. 2018). The Matanuska-Susitna Borough is aware of the holding and the policy reasons for the State of South Dakota enacting the tax at issue in Wayfair and is adopting this proposed sales tax for the same reasons. The requirement that taxes on interstate commerce must apply to an activity with a substantial nexus with the taxing authority is established when the taxpayer or collector avails itself of the substantial privilege of carrying on business in that jurisdiction. The Borough's sales tax ordinance as it applies to non-resident sellers is generally copied from the South Dakota law.

The areawide sales tax will become effective on July 1, 2022 only if the ballot proposition in the ordinance is approved by a majority of the qualified areawide voters voting on the proposition

at the regular Borough election on November 5, 2021. If approved, the sales tax will be levied for five years, or until \$73,685,000 is collected, and then expire.

**RECOMMENDATION OF ADMINISTRATION:** Consider legislation.

# MATANUSKA-SUSITNA BOROUGH FISCAL NOTE

Agenda Date: July 20, 2021

SUBJECT: AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY ADOPTING MSB 1.10.170 AND MSB 3.35, 1.5 PERCENT AREA WIDE SALES TAX FOR TRANSPORTATION SYSTEMS PROJECTS, IMPLEMENTING A 1.5 PERCENT SALES TAX WITHIN THE ENTIRE MATANUSKA-SUSITNA BOROUGH BEGINNING ON JULY 1, 2022 FOR A PERIOD OF FIVE YEARS, OR UNTIL \$73,685,000 IS COLLECTED, WHICHEVER IS EARLIER, AND THEN EXPIRE, AND SUBMITTING THE PROPOSITION TO THE VOTERS AT THE NOVEMBER 2 2021, REGULAR BOROUGH ELECTION.

ORIGINATOR: NS for MB

FISCAL ACTION (TO BE COMPLETED BY FINANCE)	FISCAL IMPACT <b>YES</b> NO
AMOUNT REQUESTED <i>up to \$73,685,000 ***</i>	FUNDING SOURCE <i>Sales Tax Revenue</i>
FROM ACCOUNT #	PROJECT
TO ACCOUNT: <i>100.000.000 3XX.XXX</i>	PROJECT #
VERIFIED BY: <i>Amie Winkler</i>	CERTIFIED BY:
DATE: <i>7-7-21</i>	DATE:

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025
Personnel Services						
Travel						
Contractual						
Supplies						
Equipment						
Land/Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING						

  

CAPITAL						
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REVENUE				***	***	***
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FUNDING:

(Thousands of Dollars)

General Fund				<i>***</i>	<i>→</i>	<i>→</i>
State/Federal Funds						
Other						
TOTAL				<i>***</i>	<i>→</i>	<i>→</i>

POSITIONS:

Full-Time				3	3	3
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary) Amount collected will depend on actual sales.

PREPARED BY: *Chesenne Dandl* PHONE: \_\_\_\_\_  
 DEPARTMENT: \_\_\_\_\_ DATE: *7/18/2021*  
 APPROVED BY: \_\_\_\_\_ DATE: \_\_\_\_\_

156  
 IM No. 21-077  
 Ordinance Serial No. 21-156  
*IM 21-155*  
*OR 21-076*