

CODE ORDINANCE

Sponsored by: Assemblymember Mayfield

Introduced: 10/18/16

Public Hearing: 11/01/16

Public Hearing Continued to 02/21/17: 11/01/16

Public Hearing: 02/21/17

Public Hearing Continued to 05/16/17: 02/21/17

Public Hearing: 05/16/17

Defeated: 05/16/17

**MATANUSKA-SUSITNA BOROUGH
ORDINANCE SERIAL NO. 17-025
(Previously Ordinance Serial 16-128)**

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY ESTABLISHING A TAX ON CERTAIN NATURAL RESOURCES WHENEVER THE NATURAL RESOURCE IS SEVERED AND REMOVED FROM PROPERTY WITHIN THE BOUNDARIES OF THE MATANUSKA-SUSITNA BOROUGH AND PROVIDING FOR PENALTIES FOR FAILURE TO PAY TAXES DUE BY ADOPTING MSB 3.55, NATURAL RESOURCE SEVERANCE TAX.

WHEREAS, the reasons and rationale for this ordinance are contained within the accompanying Informational Memorandum No. 16-191.

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. Amendment of section. MSB 3.55 is hereby adopted as follows:

**CHAPTER 3.55: [ROAD SERVICE AREA] NATURAL RESOURCE SEVERANCE
TAX**

Section

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3.55.005 APPLICABILITY.

This ordinance applies to all areas within the Matanuska-Susitna Borough.

3.55.010 ESTABLISHED; INTENT.

(A) There is hereby levied an excise tax denominated as a severance tax upon the severer of certain natural resources which are severed and removed from property within the Matanuska-Susitna Borough.

(B) The unit of measurement for material resources shall be by cubic yard.

(C) The rate of tax for natural resources severed and removed from the originating sites within the Matanuska-Susitna Borough shall be the following:

Material \$0.25/yd

(D) It is the intent of this tax to be broad in nature and exemptions to be construed narrowly. Presumptions shall be in favor of taxation unless clearly exempted.

(E) The tax situs is the location of the resource in its natural state regardless of where removal occurs.

3.55.015 EXEMPTIONS.

(A) Until such time as the Borough Assembly acts to set rates for other natural resources, this tax does not apply to coal, timber or precious metals.

3.55.020 PAYMENT OF TAX.

(A) The severance tax on a natural resource shall be paid quarterly. The tax is due on or before 30 days after the end of each quarter on natural resources severed or removed from the property during the preceding quarter. If the tax is not paid before the end of the month which it becomes due, the tax becomes delinquent. The severance tax on resources shall be paid by or on behalf of the severer initially severing the resource.

3.55.030 FILING OF STATEMENTS.

(A) The tax shall be paid to the finance department and the person paying the tax shall file with the finance department at the time the tax is paid a statement, under oath, on forms prescribed by the finance department, at a minimum, the following information:

(1) a description of the property from which the material was severed by name, legal description, or by account numbers assigned by the Borough;

(2) the names, addresses, and contact numbers of the severers paying the tax;

(3) the severer business license number, if applicable;

(4) the cubic yards of materials severed from the property;

(5) the name of first purchaser (if any) and the amount of natural resources purchased in cubic yards; and

(6) the type of material severed.

(B) Reports by or on behalf of the severer are delinquent the first day following the day the tax is due. Each severer is subject to a penalty of \$25 per day for each business day in which the report is not filed. The penalty for failure to file a report is in addition to the penalty for delinquent taxes.

3.55.040 STATEMENT VERIFICATION.

(A) The Finance Director may:

(1) require a person engaged in resource extraction, production, or transportation, any agent or employee of the person, and the purchaser of resources taxed under this chapter to furnish additional information that is considered necessary by the Finance Director to compute the amount of the tax or to determine if a tax is due;

(2) examine the pertinent books, records, and files of such a person;

(3) conduct hearings and compel the attendance of witnesses and the production of pertinent books, records, and papers of any person; and

(4) make an investigation or hold an inquiry that is considered necessary by the Manager for a disclosure of facts as to:

(a) the amount of extraction or production of a natural resource of an extractor, producer, or seller;

(b) the purchaser of the resource; and

(c) transporter of the resource from the removal site within the boundaries of the borough, if other than the purchaser.

3.55.050 CONFIDENTIALITY.

(A) Information and materials in the possession of the Borough which disclose the particulars of the business affairs of the payer of taxes under this chapter shall be kept confidential to the extent allowed by law, except in an official investigation by the Borough or other governmental agency enforcing the laws of the Borough, the state, or the United States Government. However, the Borough may use the information for contact purposes and publish statistics presented in a manner that prevents identification of particular business reports and items and may publish tax lists

from time to time identifying the names of taxpayers who are delinquent, as well as relevant information that may assist in the collection of taxes.

3.55.060 CIVIL PENALTIES.

(A) A penalty of 5 percent of the tax due shall be added to all delinquent taxes on the day they become delinquent and every 30 calendar days thereafter. However, the total penalty shall not exceed 20 percent of the tax due. Interest of two percent above the prime rate as of July 1 for the fiscal year shall accrue upon all unpaid taxes, excluding any penalty, from the due date until taxes are paid in full. However, the total interest shall not exceed 15 percent per year.

(B) For failing to file a tax statement required under this chapter, the penalty in MSB 3.55.030(B) shall apply.

(C) For filing a tax statement containing a false statement or omission required under this chapter relative to the amount, location, kind, or value of property subject to taxation with intent to evade taxation, a penalty not to exceed a fine of \$1,000 may be imposed.

(D) In addition to the remedies specified above, the Borough may use any and all remedies provided by law, including civil action, to collect the severance tax.

3.55.080 FAILURE TO FILE.

(A) Whenever the Finance Director reasonably believes a

report contains inaccurate reporting or whenever severer has become delinquent in the submission of the required reports or in remitting severance taxes, the Finance Director shall mail to the delinquent severer's last known address a written demand by certified mail, return receipt requested, for submission of the corrected or required severance tax report and remittance within ten days. In the event of non-compliance with such demand, the Finance Director may make a severance tax assessment against the delinquent severer, the assessment to be based on an estimate of the gross materials severed by the severer during the period in question. A copy of the assessment shall be sent to the severer at its last known address by certified mail, return receipt requested. The severer shall have a right to a hearing before the Finance Director, or designee, at which time the severer shall make available for examination the books, papers, records, and other documents pertaining to the materials severed for the period involved in the assessment. The severer may exercise his right to a hearing by delivering a written request for a hearing to the Finance Director within 15 days after the date the notice was mailed. The Finance Director shall establish a date and time for a hearing to be held within 14 days of receipt of the request, unless a later time is mutually agreeable. The person conducting the hearing shall issue an amended assessment, if that person determines an amendment should be made. The amended assessment, or

the original assessment if no amendment is made within five Borough business days of the hearing, shall be the final assessment for the purpose of determining the severer's liability to the Borough. If no timely request for a hearing is made, the original assessment shall be the final assessment 30 calendar days after the mailing of the notice of the original assessment unless the severer has submitted an accurate return within those 30 calendar days.

(B) A determination of the Finance Director may be appealed to the Manager.

(C) The Borough may file a civil action for collection of any taxes, penalty and interest due before or after making a demand or assessment under subsection (A) of this section.

(D) Whenever any severer fails to submit the required reports or remit taxes after notice is given as provided in subsection (A) of this section, the Finance Director may require such severer to submit reports and remit taxes on a more frequent basis.

3.55.085 LIEN FOR TAX, INTEREST AND PENALTY.

(A) The tax, interest, penalties and administrative costs imposed under this chapter shall constitute a lien in favor of the Borough upon the assets, including all real and personal property, of all respective persons severing materials from property within the Borough. The lien arises upon delinquency and continues until the liability for the amount is satisfied or the property of the delinquent person is sold at a foreclosure sale. When recorded,

the lien has priority over all other liens except:

(1) liens for property taxes and special assessments;

(2) liens that were perfected before the recording of the severance tax lien for amounts actually advanced before the recording of the severance tax lien; and

(3) mechanic's and materialmen's liens for which claims of lien under AS 34.35.070 or notices of right to lien under AS 34.35.064 have been recorded before the recording of the sales tax lien.

(B) The Borough may file a notice of lien in any manner including the manner provided for federal tax liens under AS 40.19, provided that, in addition to the rights afforded thereunder, the Borough's severance tax lien shall attach to all severer's personal property, whether tangible or intangible, located in the recording district in which the lien is filed, regardless of where the severer is actually located. The Borough may record subsequent notices of lien for amounts due after the recording of a previous notice of lien. The Borough may also record amended notices of lien to correct any errors or to provide notice of then current principal amount owing.

(C) The notice of lien for real property shall set out:

(1) the name of the severer;

(2) the principal amount owing at a stated date; and

(3) A statement that penalty, interest, and

administration costs are also owing.

(D) Within ten Borough business days after filing the notice of lien or amended notice of lien, the Borough shall mail a copy of the notice by certified mail, return receipt requested, to the last known address of severer, provided failure to so shall not void the lien nor lessen its priority.

3.55.090 DELINQUENT TAXES; PERSONAL ACTION; FORECLOSURE; TIME LIMIT.

(A) The Borough may file a personal action against a severer to recover the tax, interest and penalties due but not paid. The action may be commenced at any time within six years after tax, interest and penalty is due but not paid.

(B) The Borough may file an action to foreclose the lien of the Borough for the tax upon property and rights to property, real or personal, and sell the same, applying the proceeds thereof to the payment of the tax, interest, penalty and administrative costs and the costs of foreclosure. The action shall be commenced and pursued in the manner provided for the foreclosure of liens by AS 09.45.170 through 09.45.220; provided, however, upon commencement, the Borough shall provide written notice of the action to all persons having an interest of record in the property being foreclosed or persons in possession of the property. The action may be commenced at any time within six years after the lien arises.

3.55.095 APPEAL.

(A) A severer may appeal a decision of the Finance Director to the Manager in accordance with the provisions of this section.

(B) The severer has the right to a hearing before the Manager. The Manager may designate a hearing officer.

(C) The severer's request for a hearing must be in writing, signed by the severer (or counsel therefor) and delivered to the Manager within 30 days of receipt of written notice of the Finance Director's decision. Failure to request a hearing within the time and manner provided shall be deemed a waiver of the severer's appeal rights and to any appellate review to which the severer might have otherwise been entitled; and, the Finance Director's decision shall become final.

(D) If the severer duly delivers a request for hearing, the Manager shall hold a hearing within 15 days from the date of receipt of the request. The Manager may extend in writing the hearing date, but no extension of more than 30 days shall be granted. The Manager shall duly notify the severer of the date, time, and place of the hearing in writing.

(E) The severer may be represented by counsel at the severer's own expense.

(F) The hearing shall be open to the public.

(G) All testimony shall be under oath. The proceedings shall be audio recorded. Upon written request, the severer is entitled

to a copy of the audio recording at no charge. The severer or representative may examine and cross-examine witnesses. The Manager or representative may also question witnesses. Exhibits may be introduced. The rules of evidence need not be strictly followed. Irrelevant or unduly repetitious evidence may be excluded. The factual record is closed at the close of the hearing. The Manager may continue the hearing for good cause.

(H) The order of presentation will be:

- (1) brief opening statement by the Finance Director;
- (2) brief opening statement by the severer, which is optional;
- (3) presentation of evidence by Finance Director;
- (4) presentation of evidence by severer;
- (5) rebuttal as necessary;
- (6) argument by Finance Director;
- (7) argument by severer; and
- (8) rebuttal argument by Finance Director.

(I) The severer must prove by a preponderance of the evidence the factual basis upon which he or she is relying.

(J) Within ten days from the conclusion of the hearing, the Manager shall render a written decision with specific findings which shall be effective immediately or according to its terms.

(K) A severer who is dissatisfied with the Manager's decision may appeal it to the superior court within 30 days in

accordance with part 600 of the Alaska Appellate Rules of Procedure. The severer's failure to appeal in accordance with the Alaska Appellate Rules of Procedure constitutes a waiver of appeal rights and the Manager's decision becomes final.

3.55.100 COLLECTION AND USE OF REVENUE.

A top priority for use of the revenue derived from this tax is life, health, and safety matters. At the discretion of the Assembly, the Assembly may appropriate revenues collected under this chapter for any lawful purpose.

03.55.105 EXEMPTION.

Taxes levied and collected by this ordinance shall be exempt from the Tax Levy Limitation under MSB 3.04.075.

3.55.110 DEFINITIONS.

(A) In this Chapter, unless the context otherwise requires:

- "Assembly" means the Matanuska-Susitna Borough Assembly.
- "Borough" means the Matanuska-Susitna Borough.
- "Coal" includes but is not limited to sub-bituminous, bituminous, anthracite, and lignite classifications.
- "Material" includes but is not limited to sand, gravel, lime, soil, peat, moss, sphagnum, stone, pumice, cinders, and clay.
- "Natural resource" means any raw or unfinished resources including, but not limited to, material, timber, and coal.
- "Original or existing site" means the property boundary within which a natural resource exists in its natural state.

• "Property" includes all private, borough, state, federal, or native lands within the Borough.

• "Remove" means the first time of physical transport: (a) across any property line; or (2) across the corporate limits of the Matanuska-Susitna Borough.

• "Sever" means to separate from its original or existing state, no matter how slight.

• "Severer" means a person, company, corporation, or other entity engaged in severing or harvesting natural resources.

• "Timber" means felling, removing, or producing for sale, profit, or commercial use, timber or any product of the forest.

Section 3. Effective date. This ordinance shall take effect May 1, 2017.

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

DEFEATED UNANIMOUSLY: Sykes, McKee, Mayfield, and Kowalke