

1 Introduced by: Assembly Member Dennis Symmons
2 Drafted by: Borough Attorney, Scott Brandt-Erichsen
3 Introduced on: 07/16/2020
4 Postponed to: 08/20/2020
5 Postponed to: 09/17/2020
6 Public Hearing Date: 12/03/2020
7 Adopted on: 12/03/2020

8 **KODIAK ISLAND BOROUGH**
9 **ORDINANCE NO. FY2021-12**

10
11 **AN ORDINANCE OF THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH AMENDING**
12 **KIBC TITLE 3 REVENUE AND FINANCE, CHAPTER 3.80 EXCISE TAX ON CIGARETTES**
13 **AND TOBACCO PRODUCTS SECTIONS .020 DEFINITIONS AND SECTION .030 EXCISE TAX**
14 **ON CIGARETTES AND TOBACCO PRODUCTS.**

15
16 **WHEREAS,** the Kodiak Island Borough has authority granted to it by AS 29.35.010 to levy a
17 tax; and

18
19 **WHEREAS,** Ordinance No. FY2018-04 assessed a new excise tax on tobacco and tobacco
20 products effective October 1, 2017; and

21
22 **WHEREAS,** the fees of the Borough are to be reviewed annual per KIBC 3.10.190; and

23
24 **WHEREAS,** the assembly desires to increase the fee rate for tobacco and tobacco products.

25
26 **WHEREAS,** the assembly desires to expand the definition of 'other tobacco products',

27
28 **NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KODIAK ISLAND**
29 **BOROUGH THAT:**

30
31 **Section 1: This ordinance is of permanent nature and shall become a part of the Kodiak**
32 **Island Borough Code of Ordinances.**

33
34 **Section 2: That *Section 3.80.020 Definitions* of the Kodiak Island Borough Code of**
35 **Ordinances is amended to read as follows:**

36
37 The following words, terms, and phrases, when used in this chapter, shall have the meanings
38 ascribed to them in this section, except where the context clearly indicates a different meaning:

- 39 A. "Borough" means the Kodiak Island Borough, Alaska.
40 B. "Brought into or acquired" includes all manners, ways, and modes of bringing into or
41 obtaining cigarettes or tobacco products in the borough.
42 C. "Buyer" means a person who brings into or acquires in the borough cigarettes or other
43 tobacco products for his own consumption from any source other than a manufacturer,
44 distributor, direct-buying retailer or retailer.

- 45 D. "Cigarette" means a roll for smoking of any size or shape, made wholly or partly of tobacco,
46 whether the tobacco is flavored, adulterated, or mixed with another ingredient, if the
47 wrapper or cover of the roll is made of paper or a material other than tobacco.
- 48 E. "Department" means the borough finance department.
- 49 F. "Direct-buying retailer" means a person who is engaged in the sale of the cigarettes or
50 other tobacco products at retail in the borough, and who brings or causes them to be
51 brought into the borough.
- 52 G. "Distributor" means a person who brings cigarettes or other tobacco products or causes
53 them to be brought into the borough, and who sells or distributes them to others for resale
54 in the borough.
- 55 H. "Inventory count" means the effective date and details of a count by description, including
56 the trade name and brand, purchase price and total quantity on hand of all cigarettes and
57 other tobacco products. Detail must be subtotaled and distinguished between cigarettes
58 and other tobacco products which are taxable and cigarettes and other tobacco products
59 which were acquired exempt of the borough excise tax under this chapter.
- 60 I. "Licensee" means a person licensed under this chapter.
- 61 J. "Manufacturer" means a person who makes, fashions or produces cigarettes or other
62 tobacco products for sale to distributors or other persons within the borough.
- 63 K. "Other tobacco products" means:
- 64 a. A cigar;
- 65 b. A cheroot;
- 66 c. A stogie;
- 67 d. A perique;
- 68 e. Snuff and snuff flour;
- 69 f. Smoking tobacco, including granulated, plug-cut, crimp-cut and ready-rubbed
70 tobacco, and any form of tobacco suitable for smoking in a pipe or cigarette;
- 71 g. Chewing tobacco, including cavendish, twist, plug, or scrap tobacco and tobacco
72 suitable for chewing; or
- 73 h. An article or product made wholly or in part of tobacco or a tobacco substitute or
74 otherwise containing nicotine that is expected or intended for human
75 consumption, whether smoked, heated, chewed, absorbed, dissolved,
76 inhaled or ingested by any other means, but not including a cigarette as defined
77 in this section or a tobacco substitute prescribed by a licensed physician or drugs,
78 devices or combination products authorized for sale by the United States
79 Food and Drug Administration, as those terms are defined in the Federal
80 Food, Drug and Cosmetic Act; or
- 81 i. Any Electronic Smoking Product as defined in AS 43.70.110, and any
82 noncombustible device that can be used to deliver aerosolized or vaporized
83 nicotine to the person inhaling from the device, including, but not limited to,
84 an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. An electronic smoking
85 device includes any component, part, or accessory of such a device, whether
86 or not sold separately, and includes any substance intended to be
87 aerosolized or vaporized during the use of the device. Electronic smoking
88 device does not include any battery or battery charger when sold separately.
89 In addition, electronic smoking device does not include drugs, devices or
90 combination products authorized for sale by the United States Food and

Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

- 91
92
93 L. "Person" includes an individual, company, partnership, joint venture, joint agreement,
94 association (mutual or otherwise), corporation, estate, trust, business trust, receiver or
95 trustee, syndicate, or political subdivision of this state, or combination acting as a unit,
96 including individuals who are employees or officers of any of the such entities who are
97 under a duty to perform an act concerning which a violation of this chapter could occur. It
98 is the intent of this chapter that such persons be personally liable for unremitted taxes.
99 M. "Place of business" means a place where cigarettes or other tobacco products are sold,
100 or where they are brought or kept for the purpose of sale or consumption, including a
101 vessel, vehicle, airplane or train.
102 N. "Purchase" means the acquisition of ownership or possession of cigarettes or other
103 tobacco products from any source.
104 O. "Record" means a group of logically related fields of information concerning events
105 affecting an organization, which is an integral part of an accounting information system,
106 where separate, identifiable transaction data is entered as historical data.
107 P. "Retail" means a sale to a consumer or to any person for any purpose other than for resale.
108 Q. "Retailer" means a person in the borough who is engaged in the business of selling
109 cigarettes or other tobacco products at retail.
110 R. "Sale" includes a sale, barter, exchange and every other manner of transferring the
111 ownership of personal property.
112 S. "Tax" means the cigarette and other tobacco products excise tax assessed pursuant to
113 this chapter.
114 T. "Tax return" means the quarterly report to be submitted to the department as required by
115 this chapter.
116 U. "Vending machine operator" means a person who brings or causes cigarettes or tobacco
117 products to be brought into the borough and who owns or operates a vending machine
118 that dispenses cigarettes, whether the vending machine is installed on the person's own
119 premises or installed elsewhere.
120 V. "Wholesale price" means the established price for which a manufacturer sells a tobacco
121 product to a distributor or other person, after deduction of a discount or other reduction
122 received by the distributor for quantity or cash. [Ord. FY2018-04 §2, 2017].
123

124 **Section 3: That Section 3.08.030 Excise tax on cigarettes and other tobacco products of**
125 **the Kodiak Island Borough Code of Ordinances is amended to read as follows:**
126

- 127 A. Excise Tax on Cigarettes. The borough hereby levies an excise tax of ~~\$0.05~~ \$0.10 on
128 each cigarette brought into the borough for distribution or sale in the borough beginning
129 ~~on October 1, 2017.~~ after January 1, 2021. Cigarettes upon which the tax is imposed are
130 not again subject to the tax when acquired by another person.
131 B. Excise Tax on Other Tobacco Products. The borough hereby levies an excise tax on other
132 tobacco products at the rate of ~~25~~ 50 percent of the wholesale price of tobacco products
133 brought into the borough for distribution or sale in the borough after ~~October 1, 2017~~
134 January 1, 2021.
135

136 **Section 4: That Section 3.08.030 Excise tax on cigarettes and other tobacco products of**
137 **the Kodiak Island Borough Code of Ordinances is amended to read as follows:**
138

- 139 A. Excise Tax on Cigarettes. The borough hereby levies an excise tax of ~~\$0.05~~ **\$0.15** on
140 each cigarette brought into the borough for distribution or sale in the borough beginning
141 ~~on October 1, 2017.~~ **after July 1, 2021.** Cigarettes upon which the tax is imposed are not
142 again subject to the tax when acquired by another person.
143 B. Excise Tax on Other Tobacco Products. The borough hereby levies an excise tax on other
144 tobacco products at the rate of ~~25~~ **75** percent of the wholesale price of tobacco products
145 brought into the borough for distribution or sale in the borough after ~~October 1, 2017~~ **July**
146 **1 2021.**
147
148
149

150 **Section 5: That Section 3.08.040 Exemptions of the Kodiak Island Borough Code of**
151 **Ordinances is amended to read as follows:**
152

153 3.80.040 Exemptions.

154 The tax imposed under this chapter does not apply to:

- 155 A. Cigarettes and other tobacco products if the United States Constitution or other federal
156 laws prohibit the levying of this tax on such products within the borough.
157 B. Cigarettes and other tobacco products brought into the borough by an exchange,
158 commissary, or ship's stores operated by one of the uniformed services of the United
159 States as defined in 5 USC 2101.
160 ~~C. Any nicotine product that is used in a vaporization device such as e-cigarettes, e-cigars,~~
161 ~~e-pipes, or any other product name used to provide nicotine vapors. The vaporization~~
162 ~~device is not subject to this tax if it is not sold packaged together with a nicotine product.~~

163 **Effective Date:** That sections 1, 2, 3, and 5 of this ordinance shall become effective January 1,
164 2021, and section 4 of this ordinance shall take effect July 1, 2021.
165

166 **ADOPTED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH**
167 **THIS THIRD DAY OF DECEMBER, 2020.**
168

169 KODIAK ISLAND BOROUGH

170 

171 William Roberts, Mayor



172 ATTEST:

173 

174 Alise L. Rice, Borough Clerk

175 **VOTES:**

176 Ayes: Kavanaugh, Smith, Symmons, Turner, Williams, Arndt, and Dvorak.

177 Noes:
178