

CITY OF UNALASKA
UNALASKA, ALASKA

ORDINANCE 2021-02

AN ORDINANCE AMENDING TITLE 6 OF THE UNALASKA CODE OF ORDINANCES TO
ADOPT A NEW CHAPTER 6.56 EXCISE TAX ON TOBACCO PRODUCTS

BE IT ENACTED by the City Council of the City of Unalaska:

Section 1: Form. This is a code ordinance.

Section 2: Amendment to Title 6. Title 6 of the Unalaska Code of Ordinances is hereby amended by adding a new Chapter, numbered 6.56, to read as follows:

CHAPTER 6.56 EXCISE TAX ON TOBACCO

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§ 6.56.020	Definitions
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§6.56.010 PURPOSE.

(A) The tax levied by this chapter is intended to improve public health by reducing consumption of cigarettes and tobacco products in the City of Unalaska.

(B) The revenue generated by the tax levied under this chapter is dedicated to the City of Unalaska Community Support Grant Program for the benefit of public health programs or tobacco education and cessation programs in Unalaska.

(C) The tax imposed by this chapter is an excise tax on the privilege of bringing cigarettes or tobacco products into the City of Unalaska for commercial purposes. It is the intent and purpose of this chapter to provide for the collection of the excise tax from a distributor who brings, or causes to be brought, cigarettes or tobacco products into the City of Unalaska. The excise tax is levied when a distributor brings, or causes to be brought, cigarettes or tobacco products into the City of Unalaska from outside the City of Unalaska.

§6.56.020 DEFINITIONS.

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

(A) Cigarette means a roll for smoking of any size or shape, made wholly or partly of tobacco, whether the tobacco is flavored, adulterated, or mixed with another ingredient, if the wrapper or cover of the roll is made of paper or a material other than tobacco.

(B) Distributor means a person who brings cigarettes or tobacco products, or causes them to be brought, into the City of Unalaska, and who sells or distributes them to others in the City of Unalaska.

(C) Electronic smoking product means, without including marijuana as defined in AS 11.71.900,

(1) any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person through inhalation of vapor or aerosol from the product, of any size or shape, whether the product is manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, vape pen, or any other product name or descriptor; or

(2) a component, solution, alternative tobacco product, e-liquid, e-juice, vapor product, flavoring, or other related product of an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device of any size or shape used for, or to assist with, aerosolizing and inhaling chemical substances that may cause an adverse effect on human health.

(D) In transit means passing through the City of Unalaska while solely in the possession of a common carrier, shipping, cargo, or freight operator or private carrier, other than a distributor, and where title to the goods does pass not while in the City of Unalaska.

(E) Tobacco product means:

(1) A cigar;

(2) A cheroot;

(3) A stogie;

(4) A perique;

(5) Snuff and snuff flour;

(6) Smoking tobacco, including granulated, plug-cut, crimp-cut, ready-rubbed, and any form of tobacco suitable for smoking in a pipe or cigarette;

(7) Chewing tobacco, including cavendish, twist, plug, scrap, and tobacco suitable for chewing;

(8) An article or product made wholly or in part of tobacco or a tobacco substitute or otherwise containing nicotine, other than a cigarette, that is expected or intended for human consumption, but not including a product prescribed by a licensed physician or a product that has been approved by the United States Food and Drug Administration for sale as a tobacco use cessation product or for other medical purposes and which is being marketed and sold solely for that approved purpose; and

- (9) An electronic smoking product.
- (F) Wholesale price means the price the distributor pays for a tobacco product, after deduction of a discount or other reduction received by the distributor for quantity or cash.

§ 6.56.040 EXEMPTIONS.

The tax imposed under this chapter does not apply to:

- (A) Cigarettes or tobacco products brought into the City of Unalaska by an exchange, commissary, or ship's stores operated by one of the uniformed services of the United States as defined in 5 U.S.C. § 2101, nor shall such exchange, commissary, or ship's stores be considered a distributor.
- (B) Cigarettes or tobacco products if the United States Constitution, the Alaska Constitution, or other federal or state laws prohibit the levying of the tax on the product by the city.
- (C) Cigarettes or tobacco products in transit.

§ 6.56.050 REGISTRATION.

- (A) No person may sell, purchase, possess or bring cigarettes or tobacco products into the City of Unalaska as a distributor without first registering with the city. All business in the city holding a business license endorsement required by AS 43.70.075 shall register. The registration shall be on a form provided by the city and must include the information requested by the city.
- (B) The registration required by this chapter is in addition to any other registration or license required by law.

§ 6.56.060 APPLICATION FOR TAX REFUND.

If a distributor has remitted tobacco products tax in excess of what is due to the city, the distributor may apply to the city for a refund within one year of the date the overpayment was made. The city shall audit the distributor's account and may request any additional information the city requires to determine that a refund is due. If the city determines that a refund is due, the distributor may take a credit on the next tobacco products tax report, or the city shall pay the refund of the tax paid with interest at 3.5% per annum beginning 30 days from the date of the application for refund, with all documentation and information necessary to determine a refund is due, is received. A claim for refund not filed within one year of the date the tax was remitted to the city is forever barred. A distributor may claim a refund only where the distributor has filed a timely tobacco products tax return and therewith remitted the tobacco products taxes due under that return.

§ 6.56.070 REMITTANCE OF TAX LEVIED.

Distributors shall complete and file required returns and remit the tax levied in accordance with the following schedule:

- (A) QUARTERLY. Unless otherwise provided for in this chapter, distributors shall on or before the last day of the month succeeding the end of each quarter year ending March

31, June 30, September 30, and December 31, prepare a return for the preceding quarter year upon forms furnished by the city. Returns shall be filed personally at city hall by 5:00 p.m. or postmarked on the last day of the month following the end of each quarter year. In the event the last day of the month falls on a legal holiday or weekend, the return may be filed on the first business day following.

(B) **FILINGS TO BE CONTINUOUS.** A distributor which has filed a tobacco products tax return will be presumed to be a distributor in successive quarters unless that distributor files a return showing termination or sale of the business.

§ 6.56.080 FORM OF RETURN.

On forms furnished by the city and available at city hall, the distributor shall furnish the required information, sign the form and certify that the form correctly states the information set forth therein.

§ 6.56.090 RETURNS AND INFORMATION CONFIDENTIAL; EXEMPTIONS.

Returns filed with the city for the purpose of complying with the terms of this chapter and all data obtained from such returns are confidential, and such returns, and data obtained shall be kept from inspection by all private persons, except as necessary to investigate violations of and to enforce this chapter. Nothing contained in this section shall be construed to prohibit the delivery to a person, or their duly authorized representative, of a copy of any return or report filed by them, nor to prohibit the publication of statistics, nor to prohibit the furnishing of information on the reciprocal basis to other agencies of the State of Alaska or the United States concerned with the enforcement of tax laws.

§ 6.56.100 AMENDED RETURNS.

(A) A distributor may file an amended return, with supporting documentation, and the city 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;
- (2) The distributor provides a written justification for requesting approval of the amended return; and
- (3) The distributor agrees to submit to an audit upon request of the city.

(B) The city shall notify the distributor in writing (by email or otherwise) whether the city accepts or rejects an amended return, including the reasons for any rejection.

(C) The city may adjust a return for a distributor if, after investigation, the city determines the figure included in the original returns are incorrect, and the city adjusts the return within two years of the original due date for the return.

(D) A distributor may file a supplemental tobacco products tax return, with supporting documentation, and the city may accept the supplemental return, but only in the following circumstances:

- (1) The distributor provides a written justification for requesting approval of the supplemental return;
- (2) The distributor agrees to submit to an audit upon request of the city.

§ 6.56.110 EXTENSION OF TIME TO FILE RETURN.

Upon written application of a distributor, stating the reasons therefor, the city may extend the time to file a tobacco products tax return but only if the city finds each of the following:

- (A) For reasons beyond the distributor's control, the distributor has been unable to maintain in a current condition the books and records that contain the information required to complete the return;
- (B) Such extension is a dire necessity for bookkeeping reasons and would avert undue hardship upon the distributor;
- (C) The distributor has a plan to cure the problem that caused the distributor to apply for an extension and the distributor agrees to proceed with diligence to cure the problem;
- (D) At the time of the application, the distributor is not delinquent in filing any other tobacco products tax return, in remitting tobacco products tax to the city or otherwise in violation of this chapter; and
- (E) No such extension shall be made retroactively to cover existing delinquencies.

§ 6.56.120 CESSATION OR TRANSFER OF BUSINESS.

(A) A distributor who sells, leases, conveys, forfeits, transfers or assigns the majority of their business interest, including to a creditor or secured party, shall make a final tobacco products tax return within 30 days after the date of such conveyance.

(B) At least ten business days before any such sale is completed, the distributor shall send to the city clerk, by approved communication (email confirmation, certified first-class mail, postage prepaid) a notice that the distributor's interest is to be conveyed and shall include the name, address and telephone number of the person or entity to whom the interest is to be conveyed.

(C) Upon notice of sale and disclosure of buyer, the city shall be authorized to disclose the status of the distributor's tobacco products tax account to the named buyer or assignee.

(D) Upon receipt of notice of a sale or transfer, the city shall send the transferee a copy of this code with this section highlighted.

(E) Neither the city's failure to give the notice nor the transferee's failure to receive the notice shall relieve the transferee of any obligations under this section.

(F) Following receipt of the notice, the city shall have 60 days in which to perform a final tobacco products tax audit and assess tobacco products tax liability against the seller of the business. If the notice is not mailed at least ten business days before the sale is completed, the city shall have 12 months from the date of the completion of the sale or the city's knowledge of the completion of the sale within which to begin a final tobacco products tax audit and assess tobacco products tax liability against the seller of the business. The city may also initiate an estimated assessment if the requirements for such an assessment exist.

(G) A person acquiring any interest of a distributor in a business required to remit the tax under this chapter assumes the liability of the distributor for all taxes due the city,

whether current or delinquent, whether known to the city or discovered later, and for all interest, penalties, costs and charges on such taxes.

(H) Before the effective date of the transfer, the transferee of a business shall obtain from the city an estimate of the delinquent tobacco products tax, penalty and interest, if any, owed by the distributor as of the date of the transfer, and shall withhold that amount from the consideration payable for the transfer, until the distributor has produced a receipt from the city 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 city for the lesser of the amount of delinquent tobacco products tax, penalty and interest due from the distributor as of the date of transfer, and the amount that the transferee was required to withhold.

(I) In 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 distributor that is a corporation, limited liability company or partnership; or
- (2) A sale of all or substantially all the assets used in the business of the distributor; or
- (3) The initiation of a lease, management agreement or other arrangement under which another person becomes entitled to the remote distributor's or marketplace facilitator's gross receipts from sales, rentals or services.

(J) A distributor who terminates the business without the benefit of a purchaser, successor or assign shall make a final tax return and settlement of tax obligations within 30 days after such termination. If a final return and settlement are not received within 30 days of the termination, the distributor shall pay a penalty of \$500, plus an additional penalty of \$25 for each additional 30 day period, or part of such a period, during which the final return and settlement have not been made, for a maximum of six additional periods.

§ 6.56.130 PROCEDURES ON DELINQUENCIES.

(A) **PENALTY.** A penalty equal to 5% of the delinquent tax shall be added to the tax for the first month, or any part thereof, and an additional 5% shall be added to the tax due for each month, or fraction thereof, of delinquency until a total penalty of 20% of the tobacco products tax due has accrued. The penalty shall be assessed and collected in the same manner as the tax is assessed and collected. The penalty does not bear interest.

(B) **INTEREST.** In addition to the penalty provided in subsection (A) above, interest assessed on delinquent tax shall accrue at the rate of 15% per annum. Interest shall accrue from the date of delinquency until paid in full and shall be collected in the same manner as the delinquent tax is collected.

(C) **PRIORITY FOR CREDITING PAYMENTS.** All payments received shall be applied in the following order:

- (1) Penalties due, beginning with the oldest penalty;
- (2) Interest due, beginning with the interest due on the oldest month; and
- (3) Taxes due, beginning with the taxes due from the oldest month.

(D) **WRITTEN DEMAND AND ADDITIONAL PROCEDURES.** If a distributor fails to file the return or make the remittance in accordance with § 6.56.070 or § 6.56.080, the city may do any or all of the following things:

- (1) Cite the offender for a violation of this chapter. Any person, firm, or entity violating any provision of this chapter is guilty of a minor offense and shall be subject to a penalty as provided in § 1.24.040 or if no fine is there established, in an amount not to exceed \$500 for each violation or day a violation exists. In all cases where a person is found to have violated this chapter, the court shall order the person to file an accurate tobacco products tax return within 15 days, in addition to any fine that may be imposed as a result of the violation. Prosecution under this subsection does not limit the ability of the city to recover any amount of unpaid taxes through civil action or as otherwise provided by this chapter.
 - (2) File a civil complaint against the distributor for violation of any obligation in this chapter.
 - (3) Make a tobacco products tax assessment against the distributor, with the assessment based upon an estimate of tax levied and owed by the distributor during the period and institute civil action to recover the amount of the tobacco products tax, interest, and penalty due and to request injunctive relief. The estimate of tax may all be derived from past tobacco products tax returns of the distributor or their predecessor, the general economic level of the business community, information from tobacco products tax audits conducted by the city, if available, returns of comparable businesses and any other information believed to be reliable or helpful to the city in making an estimate of the tobacco products tax due. Notice of the estimated assessment of tobacco products taxes due shall be furnished the distributor by the city via first-class mail to the last known address of the distributor or via hand-delivery to the distributor and the estimated assessment shall become final for the purposes of determining liability of the distributor to the city after 30 days of the date of mailing or hand-delivery of the estimated assessment to the distributor unless the distributor earlier files with the city an accurate tobacco products tax return, supported by satisfactory records or documentation indicating a lesser liability.
 - (4) The tax, interest and penalty imposed under this chapter shall constitute a lien in favor of the city upon all the property of the distributor whether tangible or intangible and wherever located. The lien arises upon delinquency and continues until the liability is satisfied or the lien is foreclosed. The lien is not valid as against a mortgagee, pledgee, purchaser or judgment lien creditor until notice of the lien is filed in the office of the recorder for the Aleutian Islands or Anchorage recording district. The manner provided for Federal tax liens under AS 40.19.010 et seq. are by this reference incorporated herein as if set forth in full.
- (E) WAIVER. A penalty assessed under this section for the delinquent remittance of tobacco products tax or failure to file a tobacco products tax return may be waived by the city manager, upon written application of the distributor accompanied by a payment of all delinquent tobacco products tax, interest and penalty otherwise owed by the distributor, within 45 calendar days after the date of delinquency. A distributor may not be granted more than one waiver of penalty under this subsection in any one calendar year. The city manager shall report such waivers of penalty to the city council, in writing.

§ 6.56.140 REPAYMENT PLANS.

- (A) The city may agree to enter into a repayment plan with a delinquent distributor. No repayment plan shall be valid unless agreed to by both parties in writing.

(B) A distributor shall not be eligible to enter into a repayment plan with the city if the distributor has defaulted on a repayment plan in the previous two calendar years.

(C) The repayment plan shall include a secured promissory note that substantially complies with the following terms:

- (1) The distributor agrees to pay a minimum of 10% down payment on the tax, interest and penalty amount due. The down payment shall be applied first to penalty, then to accumulated interest, and then to the tax owed.
- (2) The distributor agrees to pay the balance of the tax, penalty and interest owed in monthly installments over a period not to exceed two years.
- (3) Interest at a rate of 15% per annum shall accrue on the principal sum due. Interest shall not apply to penalties owed or to interest accrued at the time the repayment plan is executed or accruing during the term of the repayment plan.
- (4) If the distributor is a corporation or a limited liability entity the distributor agrees to provide a personal guarantee of the obligations under the repayment plan.
- (5) The distributor agrees to pay all future tax bills in accordance with the provisions of this chapter.
- (6) The distributor agrees to provide a security interest in the form of a tobacco products tax lien for the entire unpaid balance of the promissory note to be recorded by the city at the time the repayment plan is signed. The distributor shall be responsible for the cost of recording the tax lien.

(D) If a distributor fails to pay two or more payments as required by the repayment plan agreement, the distributor shall be in default and the entire amount owed at the time of default shall become immediately due. The city will send the distributor a notice of default. The city may immediately foreclose on the tobacco products tax lien or take any other remedy available under the law.

§ 6.56.150 PERIOD OF LIMITATION.

(A) The amount of any tobacco products tax imposed under this chapter may be determined and assessed at any time within a period of six years after the tax became due and payable. The period shall begin on the date when a return is required to be filed. Where no tobacco products tax return has been filed, or where a fraudulent return has been filed, then the period of limitation does not begin to run until discovery of the delinquency or fraud occurs. No proceeding for the collection of the tobacco products tax shall be begun after the expiration of this period.

(B) No obligation to remit tax established by § 6.56.030 shall be applied retroactively.

§ 6.56.160 RECORDKEEPING.

(A) Every distributor shall retain for a period of six years all of the tobacco products tax returns, reports, forms, records and supporting schedules as may be necessary to determine the amount of tax required to be remitted.

(B) All such records and documentation required to be retained shall be made available for examination at reasonable times by the city or agents of the city, for the

purpose of ascertaining the correctness of a return for the purpose of determining the amount of tax levied.

§ 6.56.170 WITHHOLDING OF PERSONAL PROPERTY OF DISTRIBUTOR FAILING TO WITHHOLD.

(A) The city manager may by notice, served personally or by first-class mail, require any employer, person, officer or department of the state, political subdivision or agency of the state, having in their possession, or under their control, any credits or other personal property or other things of value, belonging to a distributor, to withhold, from the credits or other personal property or other things of value, the amount of any tax, interest, or penalties due from the distributor or the amount of any liability incurred by that person for failure to withhold and transmit amounts due from a distributor and to transmit the amount withheld to the city at the times that the city manager may designate. However, in the case of a depository institution, as defined in § 19(b) of the Federal Reserve Act (12 U.S.C.A. § 461(b)(1)(A)), amounts due from a distributor under this section shall be transmitted to the city not less than ten business days from receipt of the notice. To be effective, the notice shall state the amount due from the distributor and shall be delivered or mailed to any branch or office where the city manager reasonably believes credits or other property is held.

(B) When the city, pursuant to this section issues a levy upon, or requires by notice, any person, or financial institution, as applicable, to withhold all, or a portion of, a financial asset for the purpose of collecting a delinquent tax liability, the person, or financial institution, that maintains, administers, or manages that asset on behalf of the distributor, or has the legal authority to accept instructions from the distributor as to the disposition of that asset, shall liquidate the financial asset in a commercially reasonable manner within 90 days of the issuance of the order to withhold. Within five days of liquidation, the person, or financial institution, as applicable, shall remit to the city the proceeds of the liquidation, less any reasonable commissions or fees, or both, which are charged in the normal course of business.

(C) If the value of the financial assets to be liquidated exceeds the tax liability, the distributor may, within 60 days after the service of the order to withhold upon the person, or financial institution, instruct the person, or financial institution, as to which financial assets are to be sold to satisfy the tax liability. If the distributor does not provide instructions for liquidation, the person, financial institution, or securities intermediary shall liquidate the financial assets in a commercially reasonable manner and in an amount sufficient to cover the tax liability, and any reasonable commissions or fees, or both, which are charged in the normal course of business, beginning with the financial assets purchased most recently.

(D) Any corporation or person failing to withhold the amounts due from any distributor and transmit them to the city after service of the notice shall be liable for those amounts. However, in the case of a depository institution, if a notice to withhold is mailed to the branch where the account is located or principal banking office, the depository institution shall be liable for a failure to withhold only to the extent that the accounts can be identified in information normally maintained at that location in the ordinary course of business.

§ 6.56.180 TAX RULINGS.

(A) The city manager or designee shall adopt and amend procedures and forms for the administration of this chapter, and shall adopt guidelines for the determination of the taxability of transactions.

(B) The city manager or their designee shall take all steps necessary and appropriate to administer this chapter which includes the authority to enter into payment plans for delinquent tobacco products taxes, penalties and interest.

Section 3: Amendment to Title 6. Title 6, Chapter 56 of the Unalaska Code of Ordinances is hereby amended by adding a new Section, numbered 6.56.030, to read as follows:


§ 6.56.030 LEVY OF EXCISE TAX ON TOBACCO.

(A) An excise tax of \$2.00 per pack of cigarettes brought into the City of Unalaska is hereby levied.

(B) An excise tax on tobacco products at the rate of 40% of the wholesale price of tobacco products brought into the City of Unalaska is hereby levied.


Section 4: Effective Date. Section 2 of this ordinance shall be effective ninety days after passage. Section 3 of this ordinance shall be effective of October 1, 2021.

PASSED AND ADOPTED by a duly constituted quorum of the Unalaska City Council on March 30, 2021.



Vincent M. Tutiakoff, Sr.
Mayor

ATTEST:



Marjie Veeder, CMC
City Clerk

