

Introduced by: Johnson, Ecklund, Tupper
Date: 06/04/24
Hearing: 07/09/24
Action: Failed to Introduce and Set
for Public Hearing
Vote: 3 Yes, 5 No, 1 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2024-14**

**AN ORDINANCE ENACTING KPB CHAPTER 5.16, ESTABLISHING A BOROUGH-
WIDE TOBACCO PRODUCTS DISTRIBUTION EXCISE TAX**

WHEREAS, in 2019, according to the Centers for Disease Control (“CDC”), the largest tobacco companies spent \$8.2 billion marketing cigarettes and smokeless tobacco in the United States, which translates to about \$22.4 million per day or nearly \$1 million every hour; and

WHEREAS, it is estimated that cigarette smoking costs the United States more than \$600 billion in 2018, including: \$240 billion in healthcare spending, \$185 billion in lost productivity from smoking-related illnesses and health conditions, \$180 billion in lost productivity from smoking-related premature death, and \$7 billion in lost productivity from premature death from secondhand smoking exposure; and

WHEREAS, from 2014 through 2020, e-cigarette or vaping sales have increased 122.2%; and

WHEREAS, according to the CDC Office of Smoking and Health, at the website: https://www.cdc.gov/tobacco/data_statistics/fact_sheets/economics/econ_facts/index.htm, a 10% increase in price has been estimated to reduce overall cigarette consumption by 3-5%; and

WHEREAS, research on cigarette consumption suggests that both youth and young adults are two to three times more likely to respond to increases in prices than adults; and

WHEREAS, according to the Campaign for Tobacco-Free Kids, at the website: <https://www.tobaccofreekids.org/problem/toll-us/alaska>, annual health care costs in Alaska directly caused by smoking is \$509 million and the smoking-caused productivity losses in Alaska is \$621.3 million; and

WHEREAS, the Alaska Youth Risk Behavior Survey found a jump in vape use among high school students from 15.7% in 2017 to 26.1% in 2019; and

WHEREAS, a 2020 report titled "Smoking Cessation: A Report of the Surgeon General" provides that public policy approaches, including tobacco tax increases, is an important tool to curtail tobacco usage; and

WHEREAS, an excise tax is distinguished from a sales tax in as many as three ways: (1) an excise tax typically applies to a narrower range of products; (2) an excise tax is typically greater, accounting for a higher fraction of the price of the taxed products; and, (3) although exceptions exist regarding aspects of the tax imposed by this ordinance, an excise tax is often a per unit tax, costing a specific amount for a volume or unit of the item purchased, while a sales tax is typically proportioned to the price of the product; and

WHEREAS, several cities and boroughs in the State of Alaska impose excise taxes on tobacco products, including cigarettes, including but not limited to the Matanuska-Susitna Borough, the Fairbanks North Star Borough, the City and Borough of Sitka, the Municipality of Anchorage, the Kodiak Island Borough, the Northwest Arctic Borough, Petersburg Borough, the Ketchikan Gateway Borough, the City of Unalaska, the City and Borough of Juneau, the City of Bethel, and the City of Fairbanks; and

WHEREAS, it is estimated that an excise tax of approximately \$1.00 per pack of 20 cigarettes (\$0.05 per cigarette) and 35% of the wholesale price on all other tobacco products would provide annual revenues of approximately \$4.5 million dollars, which will be used for maintenance at KPBSD and KPB facilities, tobacco-free educational materials for KPBSD, and child care facility grants, if enacted; and

WHEREAS, a portion (34%) of the revenue from this tax will go toward the School Revenue Capital Project Fund to support school related capital improvements and major maintenance areawide with a focus on energy efficient projects or improvements and long-term goal of building the fund balance to support deferred projects and reduce the potential level of bonding required in the future; and

WHEREAS, a portion (15%) of the revenue from this tax will go toward the General Government Capital Project Fund to support general government capital improvements and major maintenance with a focus on energy efficient projects or improvements and long-term goal of building the fund balance to support deferred projects more immediately and reduce the potential level of bonding required in the future; and

WHEREAS, a portion (30%) of the revenue from this tax will be go toward funding the child care grant program, if enacted, under Ordinance 2024-15; and

WHEREAS, a portion (1%) of the revenue from this tax may be transferred to Alaska Department of Health's Alaska's Tobacco Quit Line to use for tobacco cessation services, campaigns, and materials within the borough pursuant to, and subject to, an agreement with the State to use the funds for such purposes; and

WHEREAS, all remaining revenue from this tax will remain in the general fund which may ultimately allow for a decrease in the general government real property tax mill rate;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. This ordinance is of a general and permanent nature and shall become part of the borough code.

SECTION 2. That the Kenai Peninsula Borough Code of Ordinances is hereby amended by adding a new chapter, KPB Chapter 5.16, Excise Tax on Cigarettes and Tobacco Products, which shall read as follows:

KPB CHAPTER 5.16. - TOBACCO PRODUCTS DISTRIBUTION EXCISE TAX

5.16.010. Applicability, purpose and intent.

- (a) Applicability. Unless otherwise expressly provided, this chapter applies areawide to all cigarettes and tobacco products, as defined in KPB 5.16.110 below, brought into or acquired in the borough.
- (b) Purpose and Intent. It is the purpose and intent of this chapter to provide for the levy, collection and enforcement of the excise tax from the person who brings tobacco products into the borough or causes tobacco products to be brought into the borough for sale. 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 borough.
- (c) Authority. This chapter and any associated regulations are adopted pursuant to the authority granted by AS 29.35.010.

5.16.030. Levy of excise tax on tobacco products.

- (a) An excise tax of \$1.00 per pack of twenty cigarettes or \$0.05 (five U.S. cents) on each cigarette brought into the borough is hereby levied.
- (b) An excise tax on tobacco products at the rate of 35% of the wholesale price of tobacco products brought into or manufactured for sale is hereby levied.

(c) The excise tax is levied when:

- (1) A distributor or manufacturer brings tobacco products into the borough or causes tobacco products to be brought into the borough from outside the borough for sale; or
- (2) A distributor or manufacturer ships or transports tobacco products to a retailer in the borough for sale by a retailer.

5.16.040. Obligation of payment by distributor.

The obligation for the payment of the tax is upon the distributor. All taxes imposed by this article become a liability to the distributor at the time of sale and are delinquent if not paid when due. Payments are made to the Kenai Peninsula Borough in accordance with the requirements in this chapter and regulations adopted in accordance with this chapter.

5.16.050. Exemptions.

The tax imposed under this article does not apply to:

- (1) Tobacco products brought into the borough by an exchange, commissary, or ship's stores operated by one of the uniformed services of the United States, as defined in § 5 USC 2101, if the tobacco products are sold to and for the sole use of authorized personnel according to current military regulations.
- (2) Tobacco products that the borough is prohibited from taxing under the United States Constitution or other federal or state laws.
- (3) Tobacco products brought into the borough for sale outside the borough.

5.16.060. Regulations.

The mayor, or designee, is empowered to adopt regulations and develop necessary applications, forms, methods or procedures to for reporting and collecting the tax imposed by this chapter. The mayor will inform the assembly of all regulations adopted to implement this chapter.

5.16.070. General provisions.

Regulations adopted by the mayor may include, but are not limited to, additional processes and procedures regarding the following general provisions:

- (1) Exemption card. A person may not acquire tobacco products in the borough which are exempt from the tax unless that person has been issued an exemption card by the borough.
- (2) Registration certificate. A person may not sell, deliver, or bring tobacco products into the borough for resale without first registering with the borough and obtaining a registration certificate.
- (3) Monthly returns. A person must submit to the borough a monthly tax return, upon forms provided by the borough, for each registration certificate, and submit payment for the taxes due. Every distributor must, on or before the last day of the month succeeding the end of each month, complete an excise tax return for the preceding month upon forms to be furnished by the borough. The return must include a total count of the number of packs of cigarettes and the wholesale price of all other tobacco products. Failure to file two or more returns in any one calendar year after notice from the borough to the seller's last registered address constitutes a minor offense with a fine not to exceed \$500.00, in addition to any civil penalty assessed.
- (4) Involuntary returns. If a person fails to file a return as required by this chapter, or when the borough finds that a return is not supported by the records to be maintained pursuant to this chapter, the department may prepare and file a return on behalf of the person.
- (5) Estimated tax. If a person fails to file a return, keep accurate books, allow inspection, or falsifies records, the borough may estimate the tax due based on best available data or evidence. The estimate must be in accordance with applicable policies or regulations. Unless the seller files an accurate monthly report covering the time period subject to the borough's estimate or files a written appeal within 30 days of the mailing of the borough's estimate, the borough's estimate becomes final for the purpose of determining the seller's tax liability.
- (6) Amended returns.
 - (i) The amended return is filed within one year after the due date of the tax return being amended. No amendment by the registrant shall be allowed after this one-year period; and
 - (ii) The registrant provides justification in writing for requesting approval of the amended return; and
 - (iii) The registrant agrees to submit to an audit upon request of the borough.

- (7) Recovery of taxes. The mayor will determine the application of tax payments and resolve delinquencies in the best interests of the borough, which may include payment agreements, negotiated settlements, or by legal action.
- (8) Penalty for non-payment. A penalty of 5% of the taxes due will be added if full amount of the tax due under this chapter is not paid within seven business days of filing the monthly return. An additional penalty of 5% of the taxes due will be incurred automatically when a person fails to file a tax return or report within the time required by this chapter. If a person fails to pay the full amount of the tax due or fails to file a tax return or report required under this chapter within 30 calendar days after its due date, the penalty increase to 10%.
- (9) Civil fraud penalty. A civil fraud penalty may be assessed against a person in addition to a penalty for failure to file or failure to pay under KPB 5.16. At the discretion of the mayor, a penalty of 25% of the deficiency due or \$200.00, whichever is greater. The penalty is computed on the total amount of the deficiency due.
- (10) Tax liens. If any person who is liable to pay a tax or registration certificate fee under this chapter neglects or refuses to pay the tax or registration fee after demand, the amount, including interest, additional amounts, or assessable penalty together with costs, may be collected in the same manner as other debts owed to the borough. In addition, should the taxes due become delinquent under this chapter, the tax, penalty, and interest due shall constitute a lien in favor of the borough upon all property and rights to property, real or personal, belonging to that person. Notice of the lien shall be recorded in the office of the district recorder.
- (11) Unlawful possession or sale. A person who offers to sell or dispose of tobacco products to others for the purpose of resale without being registered to do so is considered to have possession of the tobacco products as a distributor and is personally liable for the tax, plus a penalty of 25 percent.
- (12) Inspection of documents and records. A person subject to this chapter must keep a complete and accurate record of all cigarettes and other tobacco products manufactured, purchased, sold, brought into, transported outside of or acquired in the borough by such person. The finance director or his or her designee may, during business hours, enter the business premises of a distributor, registrant or cardholder where tobacco products are kept or stored, so far as it may be necessary for the purpose of examining such products and the related business records.

5.16.070. - Registration certificate fee—Revocation—Refunds

- (a) For each registration certificate issued under this chapter, the fee is \$200.00 unless provided otherwise in the fee schedule as approved by the assembly. An applicant for a registration certificate shall provide proof of a valid business license with applicable endorsements required by state law.
- (b) A registration certificate is neither assignable nor transferable and must be surrendered to the borough if the registrant ceases to do business or if the registrant otherwise sells, assigns, transfers, conveys, leases, forfeits, or abandons the registrant's business to any person.
- (c) The borough may revoke a registration certificate if a registrant fails to comply with any of the provisions of this chapter. The borough will not refund the registration certificate fee paid pursuant to this chapter upon the surrender or revocation of a registration certificate. Upon application on a form provided by the borough, the department will refund a registration certificate fee that is shown to have been paid or collected in error. Any claim for refund filed more than one year after the due date of the tax is forever barred.

5.16.080. - Prohibited acts.

- (a) A person, in violation of or without complying with the provisions of this chapter, may not:
 - (1) Import, distribute, or manufacture tobacco products into the borough for sale;
 - (2) Sell, transfer or acquire tobacco products in the borough; or
 - (3) Participate in the importation into the borough or in the sale, transfer or acquisition within the borough of tobacco products.
- (b) All penalties and remedies enumerated in this chapter are cumulative. Notice of the penalties incurred and to be incurred will be given to the person responsible for payment of the taxes or for filing the return or report when such tax payment or return or report is delinquent for seven calendar days after its due date.
- (c) The borough may seek injunctive relief to prevent a person from engaging in any act prohibited by this chapter and any other civil or criminal remedies available at law. Unless otherwise provided in this section, any person who violates or fails to comply with the provisions of this chapter shall be personally liable for all costs, interest, penalties and taxes due under this chapter plus a penalty equal to 30% of the tax due. For good cause shown,

the finance director may waive or reduce all or part of any penalty imposed under this subsection.

5.16.090. - Interest on unpaid tax.

In addition to any penalties imposed by this chapter, interest at the rate of 10% per annum shall be charged on the unpaid balance of delinquent taxes.

5.16.100. - Confidential and non-confidential tax information.

- (a) The following information is publicly available information:
- (1) Names and addresses of business owners who filed tax returns under this chapter;
 - (2) Whether a business is registered to collect taxes under this chapter in the borough; and
 - (3) Whether a business is current in filing tax returns and in remitting tax due under this chapter, and the number of returns not filed.
- (b) The borough may permit any authorized representative of any federal, state or other local government agency to inspect and copy any tax returns filed and reports prepared under this chapter, if the other governmental agency provides substantially similar access to the borough and if the borough determines that the other governmental agency provides adequate safeguards for the confidentiality of the tax returns and reports.
- (c) Except as otherwise provided in this section, tax forms and their contents are confidential and may not be disclosed by the finance department except:
- (1) In connection with efforts by the borough to collect the tax;
 - (2) In response to a subpoena issued by a court, state agency or governmental board or commission;
 - (3) In connection with legislative inquiry specifically authorized by the assembly;
 - (4) In connection with the borough audits for purposes of verifying borough accounting practices; or
 - (5) In compilation of statistics and studies by the Finance Department for public distribution, so long as information from individual businesses is not identifiable as to source.

5.16.110. - Definitions.

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

Borough means the Kenai Peninsula Borough, Alaska

Brought into or acquired includes all manners, ways, and modes of bringing into or obtaining cigarettes or tobacco products in the borough.

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.

Direct-buying retailer means a person who is engaged in the sale of tobacco products at retail in the borough, and who brings tobacco products into the borough or causes tobacco products to be brought into the borough.

Distributor means a person who brings cigarettes or tobacco products, or causes them to be brought, into the borough, including shipping and transporting cigarettes or tobacco, and who sells or distributes them to a retailer or to others for resale in the borough.

Manufacturer means a person who makes, fashions, or produces cigarettes, or other tobacco products for sale to distributors or other persons within the borough.

Person includes an individual, company, partnership, limited liability partnership, joint venture, joint agreement, association (mutual or otherwise), corporation, estate, trust, business trust, receiver, trustee, syndicate, a direct-buying retailer, or distributor, or any combination acting as a unit.

Retailer means a person in the borough who is engaged in the business of selling tobacco products at retail.

Sale includes a sale, barter, exchange, and every other manner of transferring the ownership of tobacco products for any consideration.

Tax means the tobacco products distribution and excise tax as levied under this chapter.

Tobacco product means:

- (1) Includes a cigarette for all purposes except for the rate of levy specific to cigarettes;

- (2) A cigar;
- (3) A cheroot;
- (4) A stogie;
- (5) A perique;
- (6) Snuff and snuff flour;
- (7) Smoking tobacco, including granulated, plug-out, crimp-out, ready-rubbed, and any form of tobacco suitable for smoking in a pipe or cigarette;
- (8) Chewing tobacco, including Cavendish, twist, plug, scrap, and tobacco suitable for chewing;
- (9) An article or product made wholly or in part of or derived from tobacco or nicotine, whether natural or synthetic, that is expected or intended for human consumption, or is likely to be consumed whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means;
- (10) Any combustible device and any substances, made wholly or in part of, or derived from, tobacco or nicotine, whether natural or synthetic, that may be aerosolized or vaporized by such device, including, but not limited to, devices manufactured as e-cigarettes, e-cigars, e-pipes, or any other product name. A noncombustible device does not include battery or battery charger when sold separately.

Tobacco product does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

Wholesale price means the established price for which a distributor sells a tobacco product to a retailer.

SECTION 3. That 34% of the annual net tobacco product distributor excise tax revenue will be transferred to the School Revenue Capital Project Fund in the fiscal year following the close of the respective fiscal year.

SECTION 4. That 15% of the annual net tobacco product distributor excise tax revenue will be transferred to General Government Capital Project Fund in the fiscal year following the close of the respective fiscal year.

SECTION 5. That up to 30% of the annual net tobacco product distributor excise tax revenue will be appropriated on an annual basis to the child care facility grant program. Any unobligated or unexpended program funds as of the end of each fiscal year will be

transferred back to the General Fund. If the Assembly fails to adopt a child care facility grant program, then this section is null and void and the funds specified for a child care facility grant program herein will be transferred to the General Fund.

SECTION 6. That 1.0 % of the annual net tobacco product distributor excise tax revenue may be transferred to Alaska Department of Health's Alaska's Tobacco Quit Line to use for tobacco cessation services, campaigns, and materials within the borough subject to an agreement to use the funds for such purposes. An agreement with the statement must be entered into prior to the transfer of funds. The mayor is authorized to negotiate and enter into an agreement with the State to effectuate the intent and purpose of this section. If the State and Borough fail to enter into an agreement within 150 days of July 1, 2025, this section is void and the funds will remain in the General Fund.

SECTION 7. That all remaining tobacco product distributor excise tax revenue will remain in the General Fund.

SECTION 8. That if the General Fund fund balance falls below the minimum requirements of the fund balance policy, the assembly may temporarily suspend the annual transfers to the School Revenue and/or General Government Capital Project Funds by way of resolution.

SECTION 9. That this ordinance shall become effective on July 1, 2025.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2024.

Brent Johnson, Assembly President

ATTEST:

Michele Turner, CMC, Borough Clerk

Yes: Ecklund, Tupper, Johnson
No: Cox, Cooper, Elam, Hibbert, Tunseth
Absent: Ribbens

FAILED