

KETCHIKAN GATEWAY BOROUGH

ORDINANCE NO. 1789-AMENDED

An Ordinance of the Assembly of the Ketchikan Gateway Borough Amending the Ketchikan Gateway Borough Code by Adding a New Chapter, 4.70, Establishing an Excise Tax, Conditioned upon Voter Ratification, on Cigarettes and other Tobacco Products Acquired Within or Brought into the Ketchikan Gateway Borough, and Providing for Penalties for Failure to Pay Taxes Due

RECITALS

- A. **WHEREAS**, the Assembly finds that several other municipal governments in Alaska, including the City and Borough of Sitka, City and Borough of Juneau, Petersburg Borough, Municipality of Anchorage, Fairbanks North Star Borough, City of Fairbanks, City of North Pole, Matanuska-Susitna Borough, City of Bethel, City of St. Mary's, City of Aniak, City of Kotzebue, and City of Barrow have adopted excise taxes on cigarettes and other tobacco products; and
- B. **WHEREAS**, the Assembly finds that collection of an excise tax on cigarettes and other tobacco products will assist in providing funds for smoking cessation programs, health promotion, and community grants for economic development; and
- C. **WHEREAS**, the Assembly finds the increased cost of cigarettes and other tobacco products resulting from imposition of an areawide Borough excise tax, as proposed in this ordinance, will be a significant deterrent to the use of tobacco, particularly among the youth; and
- D. **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 products subject to the excise tax; 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, whereas a sales tax is typically an ad valorem tax and proportional to the price of the product; and
- E. **WHEREAS**, the Assembly finds that some other boroughs imposing an excise tax have done so without a public vote on the issue; that the Alaska Supreme Court upheld the authority of a second-class borough to do so in Bragg v. Matanuska-Susitna Borough, 192 P3d 982 (Alaska 2008); and that public ratification of an excise tax on cigarettes or other tobacco products is not legally necessary; notwithstanding,

the Assembly finds further that it is appropriate public policy to make the tax imposed by this ordinance conditioned upon voter ratification; and

- F. **WHEREAS**, the Assembly finds that the relatively recent development and growth of the market for e-cigarettes and other vapor delivery devices for nicotine are alternatives to cigarettes which should be treated in the same manner as other tobacco products; and
- G. **WHEREAS**, the Assembly finds that the City of Ketchikan expressed the intention on occasions during 2015 and 2016 to enter into a cooperative agreement for joint exercise of taxing and economic development powers with the Borough to ensure coordinated taxation of these products throughout the community on a basis that the City of Ketchikan will refrain from adopting a tobacco excise tax in addition to the Borough areawide excise tax so long as the borough provides the City of Ketchikan with a proportionate share of the excise tax proceeds allocated as set forth in that cooperative agreement and authorized by this ordinance; and
- H. **WHEREAS**, if the City of Ketchikan levied within its corporate boundaries a separate tobacco excise tax identical to the one provided for in this ordinance, the proceeds of the City's tax could never exceed the proceeds of the Borough's tax; thus, the Assembly finds that an equal allocation of the net proceeds of the Borough's areawide tax between the City of Ketchikan and the borough, as authorized by this ordinance, is fair and reasonable.¹

NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE FACTS, IT IS ORDAINED BY THE ASSEMBLY OF THE KETCHIKAN GATEWAY BOROUGH, ALASKA as follows:

Section 1: That a new Chapter 4.70 of the Ketchikan Gateway Borough Code is hereby enacted to read as follows:

4.70 EXCISE TAX ON CIGARETTES AND OTHER TOBACCO PRODUCTS

- 4.70.010 Applicability of chapter
- 4.70.020 Tax on cigarettes
- 4.70.030 Tax on other tobacco products
- 4.70.040 Intent and purpose of chapter and taxpayer
- 4.70.050 Exemptions
- 4.70.060 Exemption cards

¹ Clerk's Note: On April 4, 2016, the Assembly amended Ordinance 1789 to amend KGBC 4.70.150 in Section 1 to allocate 15 percent of the net proceeds to tobacco cessation and health care programs; to remove the City of Ketchikan from the shared distribution of the proceeds; and to allocate the remaining 85 percent of the proceeds to the Schools Reserve Fund. As such, Recitals G and H no longer reflect the text of the ordinance.

- 4.70.070 License required for dealers in cigarettes or other tobacco products; issuance
- 4.70.080 License fee
- 4.70.090 Expiration and renewal of licenses
- 4.70.100 Transfer of license
- 4.70.110 Refund of tax or license fee
- 4.70.120 Display of license; surrender of license; suspension or revocation of license
- 4.70.130 Tax returns
- 4.70.140 Involuntary returns
- 4.70.150 Application of payments and proceeds
- 4.70.160 Prohibited acts and penalties
- 4.70.170 Civil fraud
- 4.70.180 Tax lien
- 4.70.190 Penalty and interest on delinquent taxes
- 4.70.200 Taxpayer, licensee, cardholder, or other person remedies
- 4.70.210 Inspection and maintenance of documents and records
- 4.70.220 Administrative Procedures
- 4.70.230 Confidentiality of records
- 4.70.240 Definitions
- 4.70.250 Annual report on excise tax

4.70.010 Applicability of chapter.

Unless provided otherwise, this chapter shall apply to the taxation of all cigarettes and other tobacco products brought into or acquired in the borough.

4.70.020 Tax on cigarettes.

The borough hereby levies an excise tax of 100 mills (\$2.00 per pack of 20 cigarettes) on each cigarette brought into the borough beginning on January 1, 2017. Cigarettes upon which the tax is imposed are not again subject to this tax when acquired by another person.

4.70.030 Tax on other tobacco products.

An excise tax of 50 percent of the wholesale price is levied on tobacco products other than cigarettes brought into the borough. The tax is levied effective January 1, 2017. Tobacco products upon which this tax is imposed are not again subject to this tax when acquired by another person.

4.70.040 Intent and purpose of chapter and taxpayer.

- (a) It is the intent and purpose of this chapter to collect the tax from the person who, for purposes of sale or distribution to others:
 - (1) first acquires the cigarettes or other tobacco products within the borough;

- (2) brings or causes cigarettes or other tobacco products to be brought into the borough;
 - (3) makes, manufactures, or fabricates cigarettes or other tobacco products in the borough;
 - or
 - (4) ships or transports cigarettes or other tobacco products into the borough.
- (b) Notwithstanding anything to the contrary contained in this chapter, the taxpayer shall be those persons described in this section and no others.

4.70.050 Exemptions.

- (a) The tax imposed under this chapter does not apply to cigarettes and other tobacco products if the United States Constitution or other federal laws or the Alaska Constitution and State laws prohibit the levying of this tax on such products by the borough.
- (b) Provided all persons otherwise subject to this chapter comply with its requirements, the tax imposed under this chapter does not apply to cigarettes and other tobacco products:
 - (1) brought into or acquired in the borough;
 - (2) transported outside of the borough; and
 - (3) which are for resale outside the borough by a merchant with an Alaska State business license, and where required, carrying an Alaska State tobacco endorsement thereon.

4.70.060 Exemption cards.

- (a) Except as otherwise provided herein, no person may acquire cigarettes or other tobacco products in the borough which are exempt from the tax unless that person has been issued an exemption card in accordance with this chapter. No licensee shall claim any exemption under this chapter unless cigarettes or other tobacco products for which an exemption is claimed have been sold or transferred to a person presenting a valid and current exemption card issued by the department in accordance with this chapter prior to such sale or transfer.
 - (1) Any person with an active physical business presence within the borough, including a licensee, may apply for an exemption card under this section as an agent for merchants whose principal places of business are located outside of the borough, and who acquire from an agent cigarettes or other tobacco products exempt from the tax imposed under this chapter, provided each merchant obtaining cigarettes or other tobacco products has a valid Alaska State business license, and where required, an Alaska state tobacco endorsement.
 - (2) A merchant acquiring cigarettes or other tobacco products through an agent under this section shall be considered an exemption cardholder for all purposes under this chapter.
 - (3) A person or licensee issued an exemption card as an agent under this section shall comply with all provisions of this chapter except the agent shall not be required to maintain records to prove that cigarettes or other tobacco products, for which an exemption is claimed under the agent's exemption card, have been resold outside of the borough by the merchant. Violation of any provision of this chapter relating to

exemption cardholders by a licensee as agent for a merchant shall be grounds for revocation of the licensee's license issued under this chapter.

- (4) Notwithstanding anything to the contrary contained in or implied by other provisions of this chapter, the licensee shall be and remain the taxpayer liable for the payment of taxes due under this chapter.
- (b) Application for an exemption card is restricted to persons with an active physical business presence within the borough acting as an agent for merchants whose principal places of business are located outside of the borough shall be on a form provided by the department and shall include the following information and such other information as the department may require:
 - (1) the applicant's name and address;
 - (2) a copy of the applicant's current Alaska State business license; and
 - (3) the merchant names and locations where cigarettes or other tobacco products will be sold.
- (c) All exemption card holders must maintain a valid, current business license, issued by the State of Alaska with a tobacco endorsement where required.
- (d) Each exemption card, unless suspended or revoked by the department, is valid from its date of issue until the end of that calendar year and may be renewed each year upon application to the department.
- (e) The department may suspend, revoke, or refuse to issue an exemption card under this section for any violation of or failure to comply with the requirements of this chapter by an agent or cardholder, including any act or omission by such person which withholds, misstates, or provides false or misleading information required by the department.

4.70.070 License required for dealers in cigarettes or other tobacco products; issuance.

- (a) No person may sell, purchase, possess or acquire cigarettes or other tobacco products in the borough as a manufacturer, distributor, direct-buying retailer, or vending machine operator without a license issued under this chapter.
- (b) The department, upon receipt of application and payment of the fee, shall issue a license to each manufacturer, distributor, direct-buying retailer, vending machine operator, or buyer. A copy of the applicant's current borough sales tax registration is required, and must accompany the application. The application must include the following information:
 - (1) the applicant's name and address;
 - (2) the name under which the cigarette or other tobacco products business will be conducted;
 - (3) the applicant's cigarette or other tobacco products business categories as a manufacturer, distributor, direct-buying retailer, or vending machine operator;
 - (4) in the case of vending machine operator, the number of vending machines which will be operated; and
 - (5) other information required on the department's application form.

- (c) The department may refuse to issue a license if there is reasonable cause to believe that the applicant has willfully withheld information requested to determine the applicant's eligibility to receive a license, or if there is reasonable cause to believe that information submitted in the application is false or misleading and is not made in good faith.
- (d) A license required by this chapter is in addition to any other license required by law.
- (e) A license issued under this chapter shall include:
 - (1) the name and address of the licensee;
 - (2) the type of business to be conducted;
 - (3) the address at which the business is conducted; and
 - (4) the years for which the license is issued.

4.70.080 License fee.

For each license issued under this chapter, and for each renewal, the fee is \$100.

4.70.090 Expiration and renewal of licenses.

A license issued under this chapter expires on December 31 of each respective year. A licensee, on application to the department accompanied by the renewal fee, may, before the expiration of the license, renew the license for two years from the expiration date of the license. If the licensee moves the business to another location within the borough, the licensee shall, upon application to the department be reissued a license for the new location for the balance of the unexpired term, without additional fees. A person whose license is lost, stolen or defaced shall immediately file an application with the department for reissuance of the license for the balance of the unexpired term.

4.70.100 Transfer of license.

A license issued under this chapter is not assignable or transferable. However, in the case of death, bankruptcy, receivership or incompetency of the licensee, or if the business of the licensee is transferred to another person by operation of law, the department may in its discretion extend the license for a limited time to the executor, administrator, trustee or receiver, or the transferee of the licensee.

4.70.110 Refund of tax or license fee.

- (a) The department shall not refund the license fee paid pursuant to this chapter upon the surrender or revocation of a license after the beginning of the license year. Upon application, the department will refund a license fee that is paid or collected in error.
- (b) If a remittance by a licensee exceeds the amount due, and the department, on audit of the account in question, is satisfied that this is the case, the department shall, upon written request of the licensee, refund the excess to the licensee without interest.

(c) Any claim for refund filed more than one year after the due date of the tax is forever barred.

4.70.120 Display of license; surrender of license; suspension or revocation of license.

- (a) A license issued under this chapter must be prominently displayed at the licensee's place of business.
- (b) A licensee shall surrender a license within ten days after:
 - (1) a revocation of a license;
 - (2) a cessation of business;
 - (3) a change of ownership of; or
 - (4) a change of a place of business.
- (c) The department may suspend or revoke a license issued under this chapter:
 - (1) for violation of this chapter; or
 - (2) if a licensee ceases to act in the capacity for which the license was issued.
- (d) No person whose license is suspended or revoked shall sell cigarettes or other tobacco products, or permit such items to be sold, during the period of the suspension or revocation on the premises occupied or controlled by that person. No disciplinary proceeding or action is barred or abated by the expiration, transfer, surrender, renewal, or extension of a license issued under this chapter.

4.70.130 Tax returns.

- (a) On or before the last day of the month succeeding the end of each calendar quarter, a licensee shall submit to the department a tax return, upon forms provided by the department, for each license, and submit payment for the taxes due.
 - (1) The return shall be signed under penalty of perjury by the licensee or its agent and must include:
 - a. the name and address of the licensee;
 - b. the name and address of the person filing the return, if different from the licensee;
 - c. the number of the license issued under this chapter;
 - d. the name under which the licensed business is being conducted;
 - e. the number of cigarettes manufactured, brought into or acquired in the borough during the preceding quarter from any source whatsoever;
 - f. the wholesale price of all tobacco products brought into, manufactured, or acquired in the borough during the preceding quarter from any source whatsoever;
 - g. the names of persons from whom cigarettes and other tobacco products were brought into or acquired in the borough during the preceding quarter from any source whatsoever;
 - h. the number of cigarettes brought into or acquired in the borough from each person named in subparagraph (g) of this section;
 - i. deductions claimed for the number of cigarettes and the wholesale price of other tobacco products for which exemptions are claimed under this chapter;

- j. deductions claimed for the number of cigarettes and the wholesale price of other tobacco products, specified in the return in response to subparagraph (e) and (f) of this paragraph, for which the tax has been paid previously by another person;
 - k. the amount of tax due on the nonexempt cigarettes manufactured, brought into or acquired in the borough during the preceding quarter; the amount of tax due based on the wholesale price of nonexempt other tobacco products manufactured, brought into or acquired in the borough during the preceding quarter; and
 - l. other information and supporting documentation which may be required by the department with the return.
- (b) Each licensee shall report the cigarette and other tobacco product sales for which an exemption is claimed as a deduction on its quarterly tax return to the department, and shall provide a copy of an invoice or other document satisfactory to the department supporting each sale to an exemption cardholder.
- (c) A tax return must be filed even if there were no cigarettes or other tobacco products manufactured, brought into or acquired in the borough during the preceding quarter.
- (d) The taxes imposed under this chapter and the return required by this section must be received by the department or postmarked on or before the last day of the month succeeding the end of each calendar quarter following the month covered by the return.
- (e) If the last day of the month succeeding the end of a quarter is a Saturday, Sunday, or holiday, the completed executed return and amount of tax due shall be transmitted and received by 5:00 p.m. local time on the next business day.

4.70.140 Involuntary returns.

If a licensee fails to file a return as required by this chapter, or when the department 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 licensee. Involuntary returns filed under this section may be premised upon any information that is available to the department, including, among other things, comparative data for similar businesses. The department shall furnish a copy of the involuntary return to the licensee by certified mail or hand delivery, and the involuntary return shall become final for purposes of determining licensee liability ten working days after delivery unless the licensee earlier files an accurate return, supported by satisfactory records, indicating a lesser liability. A licensee for whom an involuntary return is filed under this section shall be subject to liability for the tax stated in the return, as well as subject to the penalties and interest provided for in this chapter. If the department prepares an involuntary return on behalf of a licensee which has failed to file a timely return, the borough may recover its actual costs of preparing such return.

4.70.150 Application of payments and proceeds.

- (a) A tobacco excise tax fund of the Ketchikan Gateway Borough is hereby established in order to manage and monitor borough funds collected under the Tobacco Excise Tax.

- (b) Management of the borough tobacco excise tax fund shall be the responsibility of the borough manager or other person designated by the borough manager.
- (c) Any payment submitted to the department for any taxes, penalties, interest or costs due under any provision of this chapter, or any return or any finding or determination by the department under this chapter, shall be credited to the quarterly tax period for which remitted first to the payment of costs and then to penalties, interest and taxes in that order.
- (d) Proceeds of the tax under this chapter, including penalties, interest and costs recovered, are areawide funds, shall be deposited in the tobacco excise tax fund, and the funds distributed as follows:
 - (1) Costs of administration, collection, and enforcement of the tax shall be paid from the gross revenues resulting in the net tax proceeds remaining to be distributed.
 - (2) 15 percent of the net tax proceeds shall be retained by the borough, shall be restricted and may only be appropriated by the assembly to one or more entities, other than the borough, for purposes of smoking and other tobacco cessation programs; tobacco cessation education; and/or tobacco related health care purposes.
 - (3) The remaining 85 percent of the proceeds shall be deposited in the Schools Reserve Fund.

4.70.160 Prohibited acts and penalties.

- (a) No person in violation of or without complying with the provisions of this chapter may:
 - (1) import cigarettes or other tobacco products into the borough;
 - (2) sell, transfer or acquire cigarettes or other 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 cigarettes or other tobacco products.
- (b) All penalties and remedies enumerated in this chapter are cumulative.

4.70.170 Civil fraud.

- (a) A civil fraud penalty may be assessed against a person in addition to a penalty for failure to file or failure to pay taxes levied under this chapter.
- (b) If it is determined by the department that a tax deficiency or part of a tax deficiency is due to fraud, then a penalty will be added to the tax. The penalty is 50 percent of the deficiency due or \$500, whichever is greater. The penalty is computed on the total amount of the deficiency due.
- (c) For purposes of this section, "fraud" is the intentional misrepresentation of a material fact with the intent to evade payment of tax which the person believed to owe. The person must have had knowledge of its falsity and intended that it be acted upon or accepted as the truth.
- (d) To establish civil fraud, the department must prove by clear and convincing evidence that:
 - (1) the tax liability was understated; and
 - (2) the understatement was the result of an intent to evade tax.
- (e) An intent to evade tax may be demonstrated by any relevant evidence, including but not limited to the following:

- (1) the person has provided false explanations regarding understated or omitted acquisitions of cigarettes or other tobacco products;
- (2) the person has provided falsified or incomplete source documents;
- (3) the person has not justified an omission or understatement of a significant amount of acquisitions of cigarettes or other tobacco products; or
- (4) the person has substantially overstated a deduction and has failed to justify the overstatement.

4.70.180 Tax collection.

If any person who is liable to pay a tax or license fee under this chapter neglects or refuses to pay the tax or licensee fee after demand, the amount, including interest, additional amounts, or assessable penalty together with costs, may collected in the same manner as other debts owed to the borough.

4.70.190 Penalty and interest on delinquent taxes.

- (a) In the event a licensee fails or neglects to file a return when due, or fails to remit taxes due in a timely manner as required by this chapter, then such return and tax is delinquent and the borough shall add thereto penalties as follows:

If Payment is Made:	Additional Penalty (Percentage of Tax Due):
(1) Within seven working days after delinquency date	1 percent
(2) More than seven working days up to and including thirty days after delinquency date	15 percent
(3) More than thirty days up to and including sixty days after delinquency date	20 percent
(4) More than sixty days after delinquency date	25 percent

- (b) Interest shall accrue on the unpaid tax, not including penalty, from the date of delinquency to the date of payment at the rate of one percent per month. All remedies available to the borough to collect taxes, penalties and interest, plus collection costs, shall commence on the date of the delinquency. Payments received after the date of delinquency shall be applied first to payment of any collection costs, next on penalty, next on interest, and next on the tax. In the event of partial payment, penalties shall continue to accrue on the unpaid portion of the tax as provided for in subsection (a) of this section. Interest at the rate of one percent per month shall also accrue on any unpaid amount of tax until paid in full.

- (c) If a properly-filed amended return reduces the total tax liability or the tax required to be paid, or the department reduces the tax liability, the related penalty and interest will be reduced accordingly.

4.70.200 Taxpayer, licensee, cardholder, or other person remedies.

(a) Any person aggrieved by any action of the department in issuing, suspending, revoking, or refusing to issue any license or exemption card under this chapter or in fixing the amount of taxes, penalties, interest or costs under this chapter may apply to the department and request a hearing within 30 days from the date the department mails the notice of the department's action. Upon timely application under this subsection for a hearing, the finance director (hearing officer) shall hold a hearing to determine whether a correction is warranted. Hearings before the finance director under this subsection may, at the option of the finance director, be conducted by an administrative hearing officer designated by the finance director. If the finance director elects to refer the matter to an administrative hearing officer, the hearing officer shall conduct the hearing and prepare findings and conclusions. These findings and conclusions must be forwarded to the finance director for adoption, rejection, or modification and issuance of a final order or decision by the finance director. An application for a hearing must notify the department of the specific action complained of and amount of tax, interest, cost or penalty contested and the reason it is contested. After receipt of a written decision by the department, a person may appeal to the Superior Court of the First Judicial District in accordance with the Alaska Rules of Appellate Procedure.

(b) A request for appeal is filed on the date it is personally delivered, or if delivered to the department by the United States Postal Service, the date of the postmark stamped on the properly addressed cover in which the request is mailed. If the due date falls on a Saturday, Sunday, or holiday, the due date is the next working day. A current mailing address must be provided to the department with the request for appeal, and any change in mailing address after the request for appeal is filed must be reported to the department.

(c) If the notice to the person pursuant to subsection (a) of this section shows an amount due the department, the uncontested portion of the amount due must be paid within 30 days after the date of the notice. If the uncontested amount is not paid within 30 days, collection action will be taken on that amount even if the person has filed a request for appeal. Payment of the total amount due may be made at any time before the hearing. If the department has reason to believe that collection of the total amount due might be jeopardized by delay, immediate payment of the total amount will be demanded, and the department may pursue any collection remedies provided by law. Payment in full does not affect the person's right to a hearing.

(d) If a person requests a hearing and fails to appear at the hearing, the hearing office may issue a decision without taking evidence from that person, unless that person shows reasonable cause for failure to appear within seven days after the date scheduled for the hearing.

(e) Taxes, license fees, penalties, and interest declared to be due in the final administrative decision must be paid within 30 days after the date of the decision, or a bond must be filed with the court in accordance with Alaska Rules of Appellate Procedures.

4.70.210 Inspection and maintenance of documents and records.

- (a) Every person subject to this chapter shall 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.
 - (1) Except in the case of a manufacturer, the records shall include a statement containing the name and address of the person from whom cigarettes or other tobacco products were purchased or acquired, the date of delivery, the quantity of cigarettes other tobacco products the trade name and brand, and the price paid for other tobacco products purchased.
 - (2) Each invoice or other documentation of the sale of cigarettes or other tobacco products within the borough shall state whether the tax imposed under this chapter has been paid.
 - (3) Persons subject to this chapter shall keep such other documents and records as the department prescribes.
 - (4) All documents and records required by this section shall be preserved by persons subject to this chapter for three years. All records and documents required by this chapter to be kept or retained are subject to inspection within the borough upon demand by the department.
- (b) A licensee transferring or selling cigarettes or other tobacco products to an exemption cardholder must keep a record of cigarettes or other tobacco products transferred or sold to such person, including the serial number of the exemption card.
- (c) The finance director may, during business hours, enter the business premises of a licensee or exemption cardholder where cigarettes or other 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.

4.70.220 Administrative procedures.

The finance director or his or her designee, may adopt written administrative procedures and policies providing for the application and interpretation of this chapter and providing methods and forms for reporting and collecting the tax imposed by this chapter.

4.70.230 Confidentiality of records.

- (a) All tax returns, documents, records and/or reports filed with the borough pursuant to the provisions of this chapter and all data obtained from such tax returns, documents, records and/or reports are confidential and may not be released for inspection by any person, provided, however, that such data may be released upon court order.
- (b) It is the duty of the finance director to safely keep tax returns, documents, records and/or reports and all data taken thereof secure from public and private inspection except as provided by this chapter.

- (c) This section does not prohibit the borough from compiling and publishing statistical evidence concerning the data submitted provided that no identification of particular tax returns, documents, records and/or reports is made. Nothing in this section shall be deemed to prohibit the use of the tax returns, documents, records and /or reports in the course of proceedings for the collection of taxes, penalties or interest due.

4.70.240 Definitions.

- (a) The following words, terms, and phrases, when used in this chapter, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:
- "Borough" means the Ketchikan Gateway Borough.
 - "Brought into or acquired" includes all manners, ways, and modes of bringing into or obtaining cigarettes or other tobacco products in the borough.
 - "Cardholder or exemption cardholder" means a person in whose name a valid and current exemption card has been issued by the department.
 - "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.
 - "Community grants" means those payments authorized by the assembly during the budget process to be made to third parties for the provision of services to the residents of the borough which the assembly has determined are for a public purpose and serve the borough's economic development objectives.
 - "Department" means the finance department of the borough.
 - "Direct-buying retailer" means a person who is engaged in the sale of the cigarettes or other tobacco products at retail in the borough, and who brings or causes them to be brought into the borough.
 - "Distributor" means a person who brings cigarettes or other tobacco products or causes them to be brought into the borough, and who sells or distributes them to others in the borough.
 - "Exemption card" means a municipal cigarette and other tobacco products exemption card issued under this chapter.
 - "Finance Director" means the finance director of the borough or his or her designee.
 - "Inventory count" means the effective date and details of a count by description, including the trade name and brand, purchase price and total quantity on-hand of all cigarettes and other tobacco products. Detail must be subtotaled and distinguished between cigarettes and other tobacco products which are taxable and cigarettes and other tobacco products which were acquired exempt of the borough excise tax under this chapter.
 - "Licensee" means a person licensed under this chapter.
 - "Manufacturer" means a person who, within the borough, makes, fashions or produces cigarettes or other tobacco products for sale to distributors or other persons within the borough.
 - "Other tobacco products" 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 and ready-rubbed tobacco, and any form of tobacco suitable for smoking in a pipe or cigarette;
 7. chewing tobacco, including cavendish, twist, plug, or scrap tobacco and tobacco suitable for chewing; or
 8. an article or product made of tobacco or a tobacco substitute, but not including a cigarette as defined in this section or a tobacco substitute prescribed by a licensed physician; or
 9. Any noncombustible device, including any liquid solution or other substance in a cartridge or container that is capable of being used with or in a vapor product to produce vapor, or that provides a vapor of liquid nicotine to the user or relies on vaporization of any liquid or solid nicotine, including devices manufactured as e-cigarettes, e-cigars, e-pipes, or under any other product name, whether or not the nicotine is derived from tobacco or any other source.
- "Person" includes an individual, company, partnership, joint venture, joint agreement, association (mutual or otherwise), corporation, estate, trust, business trust, receiver or trustee, syndicate, or political subdivision of this state, or combination acting as a unit including individuals who are employees or officers of any of the such entities who are under a duty to perform an act concerning which a violation of this chapter could occur. It is the intent of this chapter that such persons be personally liable for unremitted taxes.
 - "Place of business" means a place where cigarettes or other tobacco products are sold, or where they are brought or kept for the purpose of sale or consumption, including a vessel, vehicle or airplane.
 - "Purchase" means the acquisition of ownership or possession of cigarettes or other tobacco products from any source.
 - "Record" means a group of logically related fields of information concerning events effecting an organization, which is an integral part of an accounting information system, where separate, identifiable transaction data is entered as historical data.
 - "Retail" means a sale to a consumer or to any person for any purpose other than for resale.
 - "Retailer" means a person in the borough who is engaged in the business of selling cigarettes or other tobacco products at retail.
 - "Sale" includes a sale, barter, exchange and every other manner of transferring the ownership of personal property.
 - "Tax" means the cigarette and other tobacco products excise tax assessed pursuant to this chapter.
 - "Tax return" means the monthly report to be submitted to the department as required by this chapter.

- "Vending machine operator" means a person who brings or causes cigarettes or other tobacco products to be brought into the borough and who owns or operates a vending machine that dispenses cigarettes, whether the vending machine is installed on the person's own premises or installed elsewhere.
- "Wholesale price" means the established price for which a manufacturer sells a tobacco product to a distributor or other person, after deduction of a discount or other reduction received by the distributor for quantity or cash.

4.70.250 Annual report on excise tax.

The borough's areawide excise tax on cigarettes and other tobacco products provides funds for smoking cessation programs, health promotion, and tax relief to residents of the borough. The increased cost of cigarettes and other tobacco products resulting from imposition of the areawide borough excise tax on cigarettes and other tobacco products is intended to be a significant deterrent to the use of tobacco, particularly among the youth. By February 28 of each year, the borough manager shall report annually to the assembly regarding the use of excise tax proceeds for smoking cessation programs and health promotion. The annual report shall also address the use of excise tax proceeds for provision of services which promote economic development of the borough. Additionally, the borough manager shall provide information about the extent of the use of cigarettes and other tobacco products in the borough to allow the assembly to monitor the effectiveness of the excise tax as a deterrent to the use of cigarettes and other tobacco products. Such information about the extent of the use of cigarettes and other tobacco products shall include data regarding: (1) the reported number of cigarettes manufactured, brought into or acquired in the borough for each quarter since the inception of the tax; (2) the wholesale value of all other tobacco products brought into, manufactured, or acquired in the borough for each quarter since the inception of the tax; and (3) any survey data or other reliable information regarding the use of cigarettes and other tobacco products within the borough.

Section 2. Penalties.

That the Ketchikan Gateway Borough Code Section 5.120.050, Fine Schedule, is amended to include the following violations:

Code Section	Offense	Penalty/Fine amount
4.70.070	Sales without a license.....	\$100.00
4.70.120(a)	Failure to display license.....	\$100.00
4.70.120(d)	Sale during Suspension	\$300.00
4.70.160(a)	Importation or Sale Violation	\$100.00

Section 3. Voter Ratification Required

That the following question shall be placed on the ballot as Proposition 1 at the Regular Election of October 4, 2016, to be voted on by the registered voters of the borough voting on the question:

"Shall the provisions of Ordinance 1789A, which establishes an excise tax on cigarettes and other tobacco products, be ratified?"

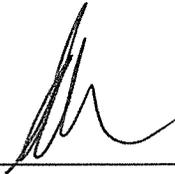
Yes

No"

Section 4. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and application thereof to any person or circumstances shall not be affected thereby.

Section 5. Effective Date. Sections 1, 2, and 4 of this ordinance shall become effective January 1, 2017, on the condition that a majority of areawide borough voters ratify Proposition 1 set out in Section 3 of this ordinance at the Regular Election of October 4, 2016. The remainder of this ordinance shall become effective immediately. Unless an ordinance extending the tax imposed by this ordinance is earlier ratified by the voters, this ordinance shall cease to be effective, and the tax imposed shall cease, 5 years from the date the tax is first imposed.

ADOPTED this 4th day of April, 2016.



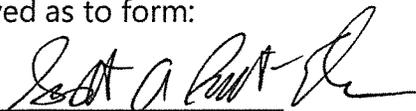
David Landis, Borough Mayor

ATTEST:



Kacie Paxton, Borough Clerk

Approved as to form:



Scott Brandt-Erichsen, Borough Attorney