

By: Mayor Jim Whitaker
Introduced: 03/25/04
Advanced: 03/25/04
Amended: 04/22/04
Adopted: 04/22/04

FAIRBANKS NORTH STAR BOROUGH

ORDINANCE NO. 2004 - 18

AN ORDINANCE PROVIDING FOR PROPERTY TAX RELIEF THROUGH
ENACTMENT OF AN 8% AREAWIDE TOBACCO DISTRIBUTION EXCISE TAX

WHEREAS, the revenue received from an areawide tobacco distribution excise tax will reduce the total allowable tax revenue derived from real property taxes thereby contributing to a diversified tax base; and

WHEREAS, the levying of an areawide tobacco distribution excise tax will provide meaningful property tax relief;

BE IT ORDAINED by the Assembly of the Fairbanks North Star Borough:

Section 1. Classification. Section 2 of this ordinance is of a general and permanent nature and shall be codified.

Section 2. Chapter 3.57 of the Fairbanks North Star Borough Code of Ordinances is enacted as follows:

Sections:

- 3.57.010 Definitions.
- 3.57.020 Imposition of excise tax on tobacco products.
- 3.57.030 Exemptions.
- 3.57.040 Registration.
- 3.57.050 Prohibited Acts and Associated Penalties.
- 3.57.060 Procedures and Forms.
- 3.57.070 Monthly reports and payment.
- 3.57.080 Penalties and Interest.
- 3.57.090 Estimated Tax.
- 3.57.100 Lien for tax, interest and penalty due.
- 3.57.110 Administrative Appeals.
- 3.57.120 Refunds.
- 3.57.130 Record Keeping.
- 3.57.140 Confidentiality of Reports and Associated Documents.
- 3.57.150 Sale of business; final tax report; liability of purchaser.

47 3.57.160 Severability.

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49 **3.57.010 Definitions.**

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

53 A. "Distributor" means a person who (1) brings tobacco products, or causes
54 them to be brought, into the borough and who sells or distributes them to others for
55 resale in the borough or (2) ships or transports a tobacco product to a retailer in the
56 borough for sale by the retailer.

57 B. "Sale" means a sale, barter, exchange, and every other manner of
58 transferring the ownership of personal property.

59 C. "Cigarette" means a roll for smoking of any size or shape, made wholly or
60 partly of tobacco, whether the tobacco is flavored, adulterated, or mixed with another
61 ingredient, if the wrapper or cover of the roll is made of paper or a material other than
62 tobacco.

63 D. "tobacco product" means:

64 (1) A cigar;

65 (2) A cheroot;

66 (3) A stogie;

67 (4) A perique;

68 (5) Snuff and snuff flour;

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

71 (7) Chewing tobacco, including Cavendish, twist, plug, scrap, and tobacco
72 suitable for chewing;

73 (8) An article or product made of tobacco or a tobacco substitute, but not
74 including a tobacco cessation substitute, including but not limited to those
75 prescribed by a licensed physician; or

76 (9) A cigarette.

77 E. "Wholesale price" means the price the distributor pays for a cigarette or
78 other tobacco product after deduction of a discount, reduction, or other financial
79 consideration such as 2/10 net receivables, received by the distributor for early
80 payment, quantity or cash.

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82 **3.57.020 Imposition of excise tax on tobacco products.**

83 A. The borough hereby levies an excise tax on the distribution of tobacco
84 products brought into the borough after July 1, 2004, measured at the rate of eight
85 percent times the wholesale price of such tobacco products.

86 B. It is the intent and purpose of this chapter to provide for the collection of
87 the excise tax from the person who brings or causes to be brought tobacco products
88 into the borough. The excise tax is levied when:

89 (1) a person brings, or causes to be brought, tobacco products into the
90 borough from outside the borough for sale; or

91 (2) a person ships or transports cigarettes or tobacco products to a
92 retailer in the borough for sale by a retailer.

93 C. Products upon which a tax is imposed under this section are not again
94 subject to the tax when acquired by another person.

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96 **3.57.030 Exemptions.**

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

98 A. Tobacco products brought into the borough by an exchange, commissary,
99 or ship's stores operated by one of the uniformed services of the United States as
100 defined in 5 USC 2101 if the tobacco products are sold to and for the sole use of
101 authorized personnel according to current military regulations.

102 B. Tobacco products if the United States Constitution or other federal or state
103 laws prohibit the levying of the tax on the product by the borough.

104 C. Tobacco products brought into the borough for sale outside the borough.

105
106 **3.57.040 Registration.**

107 A. No person may sell, purchase, possess or bring tobacco products in the
108 borough as a distributor without first registering with the borough and obtaining a
109 certificate of registration. The application for registration shall be on a form provided by
110 the borough and must include the information requested by the borough.

111 B. The registration required by this chapter is in addition to any other
112 registration or license required by law. An applicant for registration shall provide proof
113 of a valid tobacco product distribution license required by state law.

114 C. A distributor shall display the certificate of registration prominently at the
115 distributor's place of business.

116 D. A certificate of registration is neither assignable nor transferable. It shall
117 be surrendered to the borough if the distributor ceases to do business or if the
118 distributor otherwise sells, assigns, transfers, conveys, leases, forfeits, or abandons the
119 distributor's business to any person.

120 E. The borough may revoke a certificate of registration if a distributor fails to
121 comply with any of the provisions of this chapter. If a certificate has not been issued to
122 the distributor or the distributor's certificate has been revoked, the borough may seek
123 injunctive relief to prevent the distributor from engaging in any act prohibited by this
124 chapter.

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126 **3.57.050 Prohibited Acts and Associated Penalties.**

127 In addition to the other requirements of this chapter:

128 A. No distributor shall fail or refuse to pay the tax when it is due and payable
129 as required by this chapter.

130 B. No distributor shall fail or refuse to make and file any reports required by
131 this chapter.

132 C. No distributor shall fail or refuse to pay the tax to the borough as required
133 by this chapter.

134 D. No distributor shall attempt to assign or transfer a certificate of
135 registration.

136 E. No person may import tobacco products into the borough or participate in
137 the importation into the borough of tobacco products in violation of the provisions of this
138 chapter.

139 F. In addition to all other penalties provided under this chapter, any
140 distributor that violates any requirement of this section is subject to a penalty of \$1,000.
141 Any distributor that violates any requirement of this section is further subject to
142 revocation of the distributor's certificate of registration and an order prohibiting the
143 distributor from engaging in any of the actions described under 3.57.010 A.

144 G. Any person violating any of the provisions of this section is guilty of a
145 misdemeanor.

146 H. Any person who violates or fails to comply with the provisions of this
147 chapter shall be personally liable for all costs, interest, penalties and taxes due under
148 this chapter. For good cause shown, the Chief Financial Officer may waive or reduce all
149 or part of any penalty or interest imposed under this chapter.

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151 **3.57.060 Procedures and Forms.**

152 A. All tobacco products brought into the borough, unless explicitly exempted
153 by this chapter, shall be presumed to be subject to the tax imposed hereunder in any
154 action to enforce the provisions of this chapter.

155 B. The Chief Financial Officer and/or his or her designee shall take all lawful
156 and necessary actions to administer this chapter including, but not limited to, adopting
157 and revising procedures, regulations, fees, and written guidelines for taxability
158 determinations. Adopted regulations may also provide for the application and
159 interpretation of this chapter and provide for methods and forms for reporting, collecting,
160 and paying the tax imposed by this chapter.

161 C. The Chief Financial Officer and/or his or her designee may also take other
162 lawful actions to administer this chapter including, but not limited to, issuing written
163 determinations of the taxability of specific actions upon request, contracting services for
164 collection of delinquent accounts, compromising and abating penalties and interest,
165 and/or negotiating and entering into payment plans for delinquent taxes, penalties and
166 interest.

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168 **3.57.070 Monthly reports and payment.**

169 A. Every distributor shall, on or before the fifteenth day of each month, sign,
170 complete and transmit an excise tax report and pay all taxes due for the preceding
171 month. The excise tax report shall be upon forms to be furnished by the borough. The
172 report must include the wholesale price of the tobacco products brought into the
173 borough during the preceding month, the amount of excise tax due, and the wholesale
174 price of the tobacco products for which an exemption is claimed, and other information
175 and supporting documentation as the borough may require. The distributor shall file the
176 report even if the distributor has not performed any act taxable under this chapter.

177 B. If the due date is a Saturday, Sunday, or a federal or borough holiday, the
178 due dates under this chapter shall be extended until the next business day.

179 C. A report is considered filed and taxes are considered paid on the date
 180 received by the borough's collection office or on the date mailed via certified mail, U.S.
 181 Postal Service.

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 183 **3.57.080 Penalties and Interest.**

184 A. Penalties. All penalties and remedies enumerated in this chapter are
 185 cumulative.

186 B. Any distributor that fails to pay taxes to the borough as required by this
 187 chapter or fails to file a as excise tax report as required by this chapter, shall incur the
 188 following penalties:

<u>Month Filing For</u>	<u>Report/ Payment Due Date</u>	<u>Late Report/Late Payment Penalty - The greater of 50% of the taxes due or \$250. If no taxes are due, the penalty is \$50.</u>	<u>Additional Late Report/Late Payment Penalty - Additional \$250</u>
<u>January</u>	<u>February 15</u>	<u>February 16 – March 15</u>	<u>March 16</u>
<u>February</u>	<u>March 15</u>	<u>March 16 – April 15</u>	<u>April 16</u>
<u>March</u>	<u>April 15</u>	<u>April 16 – May 15</u>	<u>May 16</u>
<u>April</u>	<u>May 15</u>	<u>May 16 – June 15</u>	<u>June 16</u>
<u>May</u>	<u>June 15</u>	<u>June 16 – July 15</u>	<u>July 16</u>
<u>June</u>	<u>July 15</u>	<u>July 16 – August 15</u>	<u>August 16</u>
<u>July</u>	<u>August 15</u>	<u>August 16 – September 15</u>	<u>September 16</u>
<u>August</u>	<u>September 15</u>	<u>September 16 – October 15</u>	<u>October 16</u>
<u>September</u>	<u>October 15</u>	<u>October 16 – November 15</u>	<u>November 16</u>
<u>October</u>	<u>November 15</u>	<u>November 16 – December 15</u>	<u>December 16</u>
<u>November</u>	<u>December 15</u>	<u>December 16 – January 15</u>	<u>January 16</u>
<u>December</u>	<u>January 15</u>	<u>January 16 – February 15</u>	<u>February 16</u>

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 192 C. If a distributor is required under this chapter to submit a report or pay
 193 taxes to the borough, such distributor shall pay an additional \$1,000 penalty if the
 194 distributor's report or payment is not received by the borough within sixty days of the
 195 original due date provided under this section.

196 D. In addition to any other penalties imposed under this chapter, a distributor
 197 shall pay any administrative fees, outside collection agency fees, attorney fees, and
 198 other costs and fees incurred by the borough or its agent(s) in connection with any
 199 collection, or attempted collection, from the distributor of any unpaid tax, unpaid interest,
 200 and/or unpaid penalties due under this chapter.

201 E. Simple interest at a rate of fifteen percent (15%) per year, or a lesser rate
 202 if required by law, shall accrue on all unpaid taxes, not including penalty and
 203 administrative fees, from the original due date provided under this section until paid in
 204 full.

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205 F. The borough will apply a distributor's payment to the most delinquent
206 excise tax report in the following order: first, to any unpaid administrative fees, outside
207 collection agency fees, attorney fees, and other collection costs and fees; second, to
208 any unpaid penalties; third, to any unpaid interest that has accrued on unpaid taxes;
209 and fourth, to the principal of any unpaid taxes.

210 G. Any person who holds an ownership interest in a distributor, or any other
211 person who is a distributor, is personally liable for all taxes, penalties and interest due
212 from such distributor under this chapter.

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214 **3.57.090 Estimated Tax.**

215 A. If the borough believes a report contains inaccurate reporting or is unable
216 to ascertain the tax due from a distributor because the distributor failed to file a report,
217 pay taxes, keep accurate books, allow inspection, or maintain the records as required
218 by this chapter, the borough shall estimate the tax due based on any available
219 evidence. The borough shall mail to the distributor's last known address the borough's
220 estimated tax assessment and a written demand for submission of the corrected or
221 required excise tax report and payment within ten days. Unless the distributor files an
222 accurate excise tax report covering the time period subject to the borough's estimate or
223 files an appeal within thirty days of the mailing of the borough's estimate, the borough's
224 estimate shall become final for the purpose of determining the distributor's tax liability.

225 B. If the distributor files an appeal of the estimated tax assessment as
226 permitted in Section 3.57.110, the distributor shall, in addition to any other requirements
227 of this chapter, make available for examination the books, papers, records and other
228 relevant documents pertaining to the period involved in the assessment.

229 C. Following any requested hearing, the Chief Financial Officer shall issue an
230 amended estimated tax assessment if he or she subsequently determines that an
231 amendment should be made. The amended estimated assessment, or the original
232 estimated assessment if no amendment is made within thirty (30) days of the hearing,
233 shall be the final assessment for the purpose of determining the distributor's liability to
234 the borough.

235 D. The borough may file a civil action for collection of any taxes, penalty or
236 interest due after making a demand or assessment under subsection (A) of this section.

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238 **3.57.100 Lien for tax, interest and penalty due.**

239 The tax, costs, interest and penalty due from a distributor under this chapter shall
240 constitute a lien in favor of the borough upon the assets or property of such distributor.
241 The lien arises upon delinquency and continues until liability for the amount or judgment
242 is satisfied. The lien is not valid as against a mortgagee, pledgee, purchaser, or
243 judgment creditor until notice of the lien is filed in the records of the appropriate
244 recording office. After such filing, it is a lien prior, paramount, and superior to all other
245 liens, mortgages, hypothecations, conveyances, and assignments on all the real and
246 personal property of the person liable for the tax, and upon all the real and personal
247 property used with the permission of the owner to carry on the business that is subject
248 to the tax.

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3.57.110 Administrative Appeals.

A. A distributor may appeal to the Chief Financial Officer any estimated tax, penalties, costs, fees, or other decision under this chapter made by a borough employee other than the Chief Financial Officer. Any appeal must be filed within the earlier of thirty days after the notice of any decision or action taken is mailed to the distributor, or thirty days after the notice of any decision or action taken is otherwise communicated to the distributor.

B. The appeal must state the legal and factual basis for the appeal and include all written evidence relevant to the appeal within the appellant's possession. If the appeal raises relevant questions of fact, the Chief Financial Officer shall conduct a hearing. The Chief Financial Officer may require production of any potentially relevant documents not submitted with the appeal. The Chief Financial Officer may also issue subpoenas and subpoenas duces tecum and may exercise any other powers not prohibited by law. At the hearing, the parties shall have the right to present testimony and cross-examine witnesses. The Chief Financial Officer shall thereafter issue a written or recorded decision that includes findings of fact and conclusions.

C. An administrative appeal decision by the Chief Financial Officer is a final decision that shall be enforced under this chapter unless stayed by court order or by agreement of the borough and appellant. The Chief Financial Officer's final decision may be appealed to Superior Court in the Fourth Judicial District as provided by state law.

D. At the option of the Chief Financial Officer, any hearing held under this chapter may be conducted by a hearing officer, selected by the Chief Financial Officer or the Borough Mayor, who shall conduct the hearing and prepare findings and conclusions. These findings and conclusions shall be forwarded to the Chief Financial Officer for adoption, modification or rejection and issuance of a final decision by the Chief Financial Officer.

3.57.120 Refunds.

A. A distributor may within sixty days of filing an excise tax report submit an amended report along with a written claim for a refund. The distributor claiming the refund bears the burden of proving, by clear and convincing evidence, any overpayment to the borough.

B. The borough shall investigate all refund claims and shall present findings and recommendations to the Chief Financial Officer or his or her designee within sixty days of a distributor's filing of a written claim for refund. If the Chief Financial Officer determines that clear and convincing evidence supports the distributor's refund claim, the Chief Financial Officer or his or her designee shall issue a refund to the distributor. Within 120 days of distributor's filing of a written claim for refund, the Chief Financial Officer or his or her designee shall issue a refund, or notify the distributor that no refund shall be issued. The borough shall not pay, and shall not otherwise be held liable for, any interest on any refund.

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3.57.130 Record Keeping.

A. In order to facilitate the administration and enforcement of the provisions of this chapter, each distributor shall maintain and keep for a period of six years all of the monthly excise tax reports, forms and other records prescribed by this chapter or as prescribed hereafter by the Chief Financial Officer or his or her designee.

B. A distributor shall keep complete and accurate books, records, and accounts, showing all inventory purchases and distribution of tobacco products within the borough, for a period of six years from the date of each sale. In addition to all other record keeping requirements under this chapter, a distributor shall maintain all written and electronic records relating to the distribution of tobacco products, for a period of six years after such distribution, including but not limited to:

1. all local, state, and federal tax reports and forms;
2. all inventory, shipping, and accounting records;
3. all sales receipts; and
4. all documentary evidence supporting any exemption provided

under this chapter.

C. The Borough may conduct investigations or audit any distributor's reports by examining any of the records and materials specified in this subsection or other relevant record or material. The Chief Financial Officer, or his or her designee, is specifically authorized and empowered to examine and inspect at all reasonable hours and upon reasonable notice the books, records, products, materials and other documents of any distributor, including the distributor's state business license, in order to carry out the provisions of this chapter.

3.57.140 Confidentiality of Reports and Associated Documents.

A. Documents in the possession of the borough by operation of this chapter are available to the public for inspection and copying except as otherwise provided in this section, section 2.60.010 and state or federal law.

B. If a distributor makes a showing satisfactory to the Chief Financial Officer that a report, record, application or other information submitted by the distributor would, if made public, divulge information entitled to protection as trade secrets under state law, the borough will treat the record, report, application, or other information as confidential. This showing requires, but is not limited to, the distributor's certification under oath that

1. Public disclosure would tend to affect adversely the distributor's competitive position; and
2. The records, reports, application or other information submitted

would divulge sales figures, processes, techniques or other financial data of the distributor that are entitled to protection as trade secrets under state law.

C. It is unlawful for any person to divulge to another any documents or information obtained from any records or documents filed with the borough that have been determined by the Chief Financial Officer or his or her designee to be confidential unless otherwise provided by state law or this chapter.

336 D. The Chief Financial Officer or his or her designee shall maintain all
337 records and information deemed confidential under this section secure from public
338 inspection and release.

339 E. The borough shall not destroy any materials submitted to the borough
340 under this chapter until at least six years have elapsed since the submission of such
341 materials.

342 F. Notwithstanding other provisions of this chapter, the borough may, even
343 for records deemed confidential,

344 1. Compile and publish general statistical records concerning the data
345 submitted by distributor;

346 2. Release names, owners, mailing addresses, any past penalty or
347 interest assessments under this chapter, and the filing status of distributor to the public.
348 Filing status for this purpose includes whether a distributor is exempt, delinquent, or
349 current in payment of taxes;

350 3. Provide any records to an auditor, collection agency or attorney,
351 acting as an agent of the borough, for the review and use in performing services for the
352 borough;

353 4. Exchange confidential information about a distributor with another
354 jurisdiction, which has a similar tax, if that other jurisdiction has similar provisions
355 protecting the confidentiality of the distributor's records;

356 5. Release records with the permission of the distributor; and

357 6. Use any records in any criminal or civil action brought under this
358 chapter.

359 G. Hearings conducted by the Chief Financial Officer or a hearing officer
360 under this chapter are public.

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362 **3.57.150 Sale of business; final tax report; liability of purchaser.**

363 A. If a distributor sells, assigns, transfers, conveys, leases, forfeits or
364 abandons the business to another person, the distributor shall make a final excise tax
365 report and pay all outstanding taxes within fifteen (15) days after the date of selling,
366 assigning, transferring, conveying, leasing, forfeiting or abandoning the business. The
367 report shall show that any and all tax obligations imposed by this chapter are paid
368 concurrently with the filing of the report or have been paid. The purchaser, successor,
369 transferee, lessee, assignee, creditor or secured party shall withhold a sufficient portion
370 of the purchase money to pay the amount of any excise taxes, penalties and interest as
371 may be due and unpaid to the borough. If the purchaser, assignee, transferee, lessee,
372 successor, creditor or secured party fails to withhold from the purchase money, or fails
373 to otherwise provide for or make the payment of the taxes, interest and penalty owed by
374 distributor as provided in this chapter, the purchaser, assignee, transferee, lessee,
375 successor, creditor or secured party shall be personally liable for the payment of the
376 taxes, penalties and interest accruing and unpaid to the borough on account of the
377 operation of the distributorship of any former owner, owners, operators or assigns.

378 B. Before the sale, lease, assignment, transfer, or other disposition of the
379 business is completed, the distributor shall file with the borough an informational notice
380 identifying the name and address of each person involved in the transaction, the nature
381 of the transaction, and the effective date of the transaction.

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3.57.160 Severability.

If any section, subsection, paragraph, sentence, clause, or phrase of this chapter is held to be unconstitutional or in violation of law, then that holding shall not affect the validity of the remainder of this chapter.

Section 3. Effective date. This ordinance is effective July 1, 2004.

PASSED AND APPROVED THIS 22nd DAY OF APRIL 2004.

Hank Bartos
Presiding Officer

ATTEST:

Mona Lisa Drexler, CMC
Municipal Borough Clerk

Ayes: Romans, Sattley, Rex, Henry, Beck, Aldridge, Cummings, Bartos
Noes: Frank, Williams, Hutchison