

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 2005-37

BALLOT PROPOSITION OCTOBER 2005

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA, ALASKA PROPOSING TO AMEND TITLE 4, REVENUE & FINANCE, OF THE SITKA GENERAL CODE BY ADDING A NEW CHAPTER 4.26, EXCISE TAX ON CIGARETTES AND TOBACCO PRODUCTS, TO ESTABLISH AN EXCISE TAX ON CIGARETTES AND TOBACCO PRODUCTS ACQUIRED WITHIN OR BROUGHT INTO THE CITY AND BOROUGH OF SITKA AND PROVIDING FOR PENALTIES FOR FAILURE TO PAY TAXES DUE; PROPOSING TO AMEND THE HOME RULE CHARTER OF THE CITY AND BOROUGH OF SITKA TO CREATE A DEDICATED FUND FOR SITKA COMMUNITY HOSPITAL AND PLACE IN THAT DEDICATED FUND ANY REVENUES GAINED FROM THAT EXCISE TAX; AND SUBMITTING TO THE VOTERS THESE AMENDMENTS FOR RATIFICATION

1. **CLASSIFICATION.** This ordinance is of a permanent nature and is intended to become a part of the Sitka General Code.

2. **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.

3. **PURPOSE.** The City and Borough owns and operates Sitka Community Hospital, and the City and Borough's Finance Director has estimated that Sitka Community Hospital needs \$1 million per year in additional funding in order to maintain service levels. If ratified by the voters, this ordinance would amend the Sitka General Code effective January 1, 2006 to adopt a 50-mill excise tax on cigarettes and a 45 percent excise tax on the wholesale value of all other tobacco products. (This 50-mill excise tax would mean that each cigarette would be taxed five cents.) If ratified by the voters, this ordinance would amend the Home Rule Charter of the City and Borough of Sitka to create a dedicated fund for Sitka Community Hospital and place the revenues gained from this excise tax in that dedicated fund.

4. **ENACTMENT.** NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka that:

- A. Title 4, Revenue & Finance, of the Sitka General Code is hereby amended by adding a new Chapter 4.26, Excise tax on cigarettes and tobacco products, to read as follows:

4.26 EXCISE TAX ON CIGARETTES AND TOBACCO PRODUCTS

Section

- 4.26.010 Applicability of chapter
- 4.26.020 Tax on cigarettes
- 4.26.030 Tax on other tobacco products
- 4.26.040 Intent and purpose of chapter and taxpayer
- 4.26.050 Exemptions
- 4.26.060 Exemption cards
- 4.26.070 License required for dealers in cigarettes or tobacco products;
issuance
- 4.26.080 License fee
- 4.26.090 Expiration and renewal of licenses
- 4.26.100 Transfer of license
- 4.26.110 Refund of tax or license fee
- 4.26.120 Display of license; surrender of license; suspension or revocation
of license
- 4.26.125 Tax returns
- 4.26.130 Involuntary returns
- 4.26.135 Amended tax returns
- 4.26.140 Application of payments
- 4.26.145 Prohibited acts and penalties
- 4.26.150 Civil fraud
- 4.26.155 Tax lien
- 4.26.160 Interest on unpaid tax
- 4.26.165 Taxpayer, licensee, cardholder or other person remedies
- 4.26.170 Reports by manufacturers
- 4.26.175 Inspection and maintenance of documents and records
- 4.26.180 Administrative regulations
- 4.26.185 Confidentiality of records
- 4.26.190 Definitions

4.26.010 Applicability of chapter.

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

4.26.020 Tax on cigarettes.

- A. The municipality hereby levies an excise tax of 50 mills, adjusted annually as provided in subsection B of this section, on each cigarette brought into the City and Borough beginning on January 1, 2006. Cigarettes upon which the tax is imposed are not again subject to the tax when acquired by another person.
- B. The annual Consumer Price Index adjustment shall be based on the August release date of the semiannual report for the Municipality of Anchorage from the United States Department of Labor statistics

and determined to be the percent change to the current year from the average of the first and second half of the prior year, and will be effective January 1 of each year following the August release date. The first such adjustment date shall be January 1, 2007.

4.26.030 Tax on other tobacco products.

An excise tax of 45 percent of the wholesale price is levied on tobacco products, other than cigarettes, brought into the City and Borough. The tax is levied effective January 1, 2006. Tobacco products upon which this tax is imposed are not again subject to this tax when acquired by another person.

4.26.040 Intent and purpose of chapter.

- A. It is the intent and purpose of this chapter to collect the tax from the person who:
 - 1. first acquires the cigarettes or other tobacco products within the City and Borough;
 - 2. brings or causes cigarettes or other tobacco products to be brought into the City and Borough;
 - 3. makes, manufactures, or fabricates cigarettes or other tobacco products in the City and Borough; or
 - 4. ships or transports cigarettes or other tobacco products into the City and Borough.

- B. Notwithstanding anything to the contrary contained in this chapter, the taxpayer shall be those persons described in this section and no others.

4.26.050 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 prohibit the levying of this tax on such products by the City and 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 City and Borough;
 - (2) transported outside of the City and Borough; and

- (3) which are for resale outside the City and Borough by a merchant with an Alaska State business license carrying an Alaska State tobacco endorsement thereon.

4.26.060 Exemption cards.

- A. Except as otherwise provided herein, no person may acquire cigarettes or other tobacco products in the City and Borough exempt of 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 City and 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 City and Borough, and who acquire from an agent cigarettes or other tobacco products exempt from the tax imposed under this chapter, provided each merchant has a valid Alaska State business license with a tobacco endorsement and the line of business code or equivalent thereon.
 2. A merchant acquiring cigarettes and 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 and other tobacco products for which an exemption is claimed under the agent's exemption card have been resold outside of the City and 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 City and Borough acting as an agent for merchants whose principal places of business

are located outside of the City and Borough, shall be on a form provided by the Finance Department, and shall include the following information and such other information as the Finance Department may require:

1. the applicant's name and address;
 2. a copy of the applicant's current Alaska State business license, including a tobacco endorsement and the line of business code or equivalent; and
 3. the merchant names and locations where cigarettes and tobacco products will be sold.
- C. All exemption card holders must maintain a valid, current business license, with a tobacco endorsement and line of business code or equivalent, issued by the State of Alaska.
- D. Each exemption card, unless suspended or revoked by the Finance Department, is valid from its date of issue until the end of that calendar year and may be renewed each year upon application and payment of the fee to the Finance 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 agent or cardholder, including any act or omission by such person which withholds, misstates or provides false or misleading information required by the Finance Department.

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

- A. No person may sell, purchase, possess or acquire cigarettes or tobacco products in the borough as a manufacturer, distributor, direct-buying retailer, vending machine operator or buyer without a license issued under this chapter.
- B. The department, upon 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 business license 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 tobacco products business will be conducted;

- (3) the applicant's cigarette or tobacco products business categories as a manufacturer, distributor, direct-buying retailer, vending machine operator or buyer;
 - (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.

4.26.080 License fee.

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

4.26.090 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. 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.

4.26.100 Transfer of license.

A license issued under this chapter is not assignable or transferable. However, in the case of death, bankruptcy, receivership on 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.

4.26.110 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.

4.26.120 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:
 - a. for violation of this chapter or a regulation of the City and Borough adopted pursuant to this chapter; or
 - b. 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 tobacco products or permit cigarettes or tobacco products 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.

4.26.125 Tax returns.

- A. On or before the last day of each calendar month 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 his 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 cigarette or tobacco business is being conducted;
 - (e) the number of cigarettes manufactured, brought into or acquired in the City and Borough during the preceding month from any source whatsoever;
 - (f) the wholesale price of all tobacco products brought into or acquired in the City and Borough during the preceding month from any source whatsoever;
 - (g) the names of persons from whom cigarettes and other tobacco products were brought into or acquired in the City and Borough during the preceding month from any source whatsoever;
 - (h) the number of cigarettes brought into or acquired in the City and 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 City and Borough during the preceding month; and the amount of tax due based on the wholesale price of nonexempt other tobacco products manufactured,

- brought into or acquired in the City and Borough during the preceding month; 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 monthly tax return to the department and shall provide a copy of an invoice or other document satisfactory to the department supporting each sale to a cardholder.
- C. A tax return must be filed even if there were no cigarettes or tobacco products manufactured, brought into or acquired in the borough during the preceding month.
- 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 each calendar month following the month covered by the return.

4.26.130 Involuntary returns.

- A. 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. 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. A return prepared by the department is, prima facie, good and sufficient for all legal purposes. However, nothing prevents the licensee from presenting evidence on an appeal to rebut the presumed sufficiency of a return prepared by the department, nor does the presumption of sufficiency alter the parties' respective burdens of proof once the licensee has presented evidence to rebut that presumption.

4.26.135 Amended tax returns.

- A. Any tax return filed hereunder may be amended by the licensee within one year after the due date of the tax return being amended. No amendment by the licensee shall be allowed after this one-year period.

- B. Any tax return prepared and filed by the department on behalf of the licensee may be amended by the licensee within one year of the date filed by the department. No amendment by the licensee shall be allowed after this one year period.

4.26.140 Application of payments.

Any payment submitted to the department for any taxes, penalties, interest or cost 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 monthly tax period for which remitted first to the payment of costs and then to penalties, interest and taxes in that order.

4.26.145 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 City and Borough;
 - (2) sell, transfer or acquire cigarettes or other tobacco products in the City and Borough; or
 - (3) participate in the importation into the City and Borough or in the sale, transfer or acquisition within the City and Borough of cigarettes or other tobacco products.

- B. A penalty of 6 percent of the taxes due shall be incurred automatically when a person fails to pay the full amount of the tax due under this chapter within seven calendar days following its due date. An additional penalty of 6 percent of the taxes due shall be incurred automatically when a person fails to file a tax return or report within seven calendar days following its due date under this chapter. If a person fails to pay the full amount of the tax due and/or file a tax return or report required under this chapter within 16 calendar days after its due date, the 6 percent penalties incurred above shall be increased automatically to 15 percent. The penalty shall be computed on the unpaid balance of the tax liability as determined by the department.
 - a. Notice of the penalties incurred and to be incurred shall 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.

- b. The penalties provided for in this section shall be in addition to all other penalties and interest provided for under this chapter.
- 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 will be reduced accordingly.
- D. All penalties and remedies enumerated in this chapter are cumulative.
- E. 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 percent of the tax due. For good cause shown, the chief fiscal officer may waive or reduce all or part of any penalty imposed under this subsection.

4.26.150 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.
- 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. 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 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 tobacco products; or
- (4) the person has substantially overstated a deduction and has failed to justify the overstatement.

4.26.155 Tax lien.

- A. 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, is a lien in favor of the borough upon all property and rights to property, real or personal, belonging to that person.
- B. The lien imposed by this section arises upon delinquency and continues until the amount is paid or a judgment against the person arising out of the liability is satisfied.
- C. A lien arising out of a tax due under this chapter, including the penalties and interest on the tax, is, subject to A.S. 29.45.300, a lien prior, paramount and superior to all other liens, mortgages, hypothecation, conveyances and assignments, upon all real and personal property of the person liable for the tax and upon all the real and personal property used with the permission of the owner to carry on the business which is subject to the tax.
- D. The lien on personal and real property may be enforced as provided in A.S. 29.45.300 – 29.45.480 for enforcement of real and person property tax liens.

4.26.160 Interest on unpaid tax.

In addition to any penalties imposed by this chapter, interest at the rate of 12 percent per annum shall be charged on the unpaid balance of delinquent taxes.

4.26.165 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 chief fiscal officer (the hearing officer) shall hold a hearing to determine whether a correction is warranted. Hearings before the chief fiscal officer under this subsection may, at the option of the chief fiscal officer, be conducted by an administrative hearing officer designated by the chief fiscal officer. If the chief fiscal officer 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 chief fiscal officer for adoption, rejection, or modification and issuance of a final order or decision by the chief fiscal officer. 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 Appellate Court Rules. The person shall be given access to the department's file in the matter for preparation of the appeal.

- 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 provide 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 request 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 Court Rules of Appellate Procedures.

4.26.170 Reports by manufacturers.

- A. No later than the end of each calendar month, a manufacturer shall submit a report to the department stating:
 - (1) a list of the tobacco products, the quantity and their wholesale price and the number of cigarettes which were brought into the City and Borough from the manufacturer during the preceding month;
 - (2) the name and address of those persons bringing cigarettes and tobacco products into the borough from the manufacturer during the preceding month; and
 - (3) a list of the quantity of tobacco products, the wholesale price, and the number of cigarettes brought from the manufacturer into the borough by each person named in paragraph (2) of this section.

4.26.175 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 City and 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 and 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 City and 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 City and Borough upon demand by the department.
- B. A licensee transferring or selling cigarettes or other tobacco products to a cardholder must keep a record of cigarettes and other

tobacco products transferred or sold to such person, including the serial number of the exemption card.

- C. The chief fiscal officer may, during business hours, enter the business premises of a licensee or 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.

4.26.180 Administrative regulations.

The Finance Director or his or her designee, may adopt regulations providing for the application and interpretation of this chapter and providing methods and forms for reporting and collecting the tax imposed by this chapter.

4.26.185 Confidentiality of records.

- A. All tax returns, documents, records and/or reports filed with the City and 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 chief fiscal officer 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 internal auditor from examining the tax returns, documents, records and/or reports provided that no information obtained from specific or identifiable tax returns shall be made available to persons other than those authorized to review them under subsection A of this section.

4.26.190 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:

- “Brought into or acquired” includes all manners, ways, and modes of bringing into or obtaining cigarettes or tobacco products in the City and Borough.
- “Buyer” means a person who brings into or acquires in the City and Borough cigarettes or other tobacco products for his own consumption from any source other than a manufacturer, distributor, direct-buying retailer or retailer.
- “Cardholder or exemption cardholder” means a person in whose name a valid and current exemption card has been issued by the department.
- “Chief fiscal officer” means the finance director of the City and Borough or his designee.
- “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. “City and Borough” means the City and Borough of Sitka, Alaska.
- “Department” means the finance department of the City and Borough.
- “Direct-buying retailer” means a person who is engaged in the sale of the cigarettes or other tobacco products at retail in the City and Borough, and who brings or causes them to be brought into the City and Borough.
- “Distributor” means a person who brings cigarettes or other tobacco products or causes them to be brought into the City and Borough, and who sells or distributes them to others for resale in the City and Borough.
- “Exemption card” means a municipal cigarette and tobacco products exemption card issued under this chapter.
- “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 City and Borough excise tax under this chapter.
- “Licensee” means a person licensed under this chapter.
- “Manufacturer” means a person who makes, fashions or produces cigarettes or other tobacco products for sale to distributors or other persons within the City and Borough.
- “Other tobacco products” means:
 - a. a cigar;
 - b. a cheroot;

- c. a stogie;
 - d. a perique;
 - e. snuff and snuff flour;
 - f. 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;
 - g. chewing tobacco, including cavendish, twist, plug, or scrap tobacco and tobacco suitable for chewing; or
 - h. 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.
- “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, airplane or train.
 - “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 tobacco products to be brought into the City and 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.

- B. The Home Rule Charter of the City and Borough of Sitka is hereby amended by adding a new Title XX, Sitka Community Hospital, to read as follows:

ARTICLE XX

SITKA COMMUNITY HOSPITAL

Section 20.01 Sitka Community Hospital Dedicated Fund

A Sitka Community Hospital Dedicated Fund is hereby created. The Sitka Community Hospital Dedicated Fund shall be maintained separate and apart from all other funds and accounts of the City and Borough. The Sitka Community Hospital Dedicated Fund shall only be used to pay for the operating, capital, and debt service needs of Sitka Community Hospital.

Section 20.02 [Reserved.]

Section 20.03 [Reserved.]

Section 20.04 Flow of Money into the Sitka Community Hospital Dedicated Fund from an Excise Tax on Cigarettes and Tobacco Products

Notwithstanding any other provision of law, an amount of money equal to the City and Borough's revenues from enacting an excise tax on cigarettes and tobacco products shall be deposited each year into the Sitka Community Hospital Dedicated Fund.

- C. The following question shall be placed on the ballot at the general election on October 4, 2005:

Shall the Sitka General Code be changed effective January 1, 2006 to adopt a 50-mill excise tax on cigarettes and a 45 percent excise tax on the wholesale value of all other tobacco products and place the revenues gained into a dedicated fund for Sitka Community Hospital?

Yes

No

Informational: A 50-mill excise tax on cigarettes is a tax of five cents per

cigarette. The revenues gained from this excise tax could only be used to pay for Sitka Community Hospital's operating, capital, and debt service needs.

5. **EFFECTIVE DATE.** This ordinance shall become effective on the day after the date of its passage. The amendments to the Sitka General Code and the Home Rule Charter of the City and Borough of Sitka set out in Subsections 4.A and 4.B shall only become effective if a majority of the voters voting on this ordinance at the election on October 4, 2005 approve this ordinance, and if a majority of voters so approve then those amendments set out in Subsections 4.A-4.B shall become effective on January 1, 2006.

PASSED, APPROVED, AND ADOPTED by the Assembly of the City and Borough of Sitka, Alaska this 26th day of July, 2005.

Marko Dapcevich, Mayor

ATTEST:

Colleen Pellett, CMC
Municipal Clerk