



MUNICIPALITY OF ANCHORAGE

ASSEMBLY MEMORANDUM

NO. AM 629-2013

Meeting Date: November 5, 2013

1 **From: Mayor**

2
3 **Subject: AN ORDINANCE OF THE ANCHORAGE ASSEMBLY REPEALING**
4 **AND RE-ENACTING ANCHORAGE MUNICIPAL CODE CHAPTER**
5 **12.40, EXCISE TAX ON CIGARETTES AND OTHER TOBACCO**
6 **PRODUCTS.**
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9 The purpose of this ordinance is to significantly curtail or eliminate tobacco tax
10 evasion schemes, including business-to-business schemes that recently deprived
11 the Municipality of Anchorage of a significant amount of tobacco tax revenues.
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13 Tobacco tax is the Municipality's third largest tax revenue source, behind property
14 tax and room tax. Tobacco tax is currently budgeted at \$22 million annually,
15 including annual losses due to tax evasion. Tobacco tax is the municipal tax most
16 vulnerable to abuse due to the incentive for significant illicit profit and the fact that
17 tobacco product is compact, light in weight, and easily moved.
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19 The current Anchorage Municipal Code chapter 12.40 is inadequate to protect
20 against certain intentional tax evasion schemes. This is evidenced by the July
21 2013 indictment of eight local business persons by a joint task force of federal,
22 state, and local law enforcement officials for alleged criminal activity including
23 evasion of Municipal tobacco tax (U.S. Federal Court case #3:13-CR-0080-SLG).
24 Per the federal indictment, the Municipality was deprived of approximately \$1.3
25 million of tobacco tax during the 21-month investigation period.
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27 Over the past two years, as the criminal investigation proceeded, the Treasury
28 Division conducted extensive research of various methods related to curtailing
29 incentives for tobacco tax evasion schemes. Research included collaboration with
30 industry, the State of Alaska, Department of Revenue, review of other jurisdictions'
31 tobacco tax codes, review of the federal Prevent All Cigarette Trafficking Act
32 (PACT Act, P.L. 111-154) and the Jenkins Act, 15 U.S.C. § 375 *et seq.*, and
33 discussions with U.S. Attorneys regarding effectiveness of enforcement
34 methodologies. After careful consideration, it is believed that the administrative
35 enforcement measures set forth by the proposed new AMC chapter 12.40 will
36 result in the greatest cost-effective impact on curtailing the potential for future
37 tobacco smuggling.
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1 The new Chapter 12.40 focuses on the privilege to sell tobacco products in the
2 MOA. All merchants involved in selling or acquiring cigarettes and/or other tobacco
3 products in the Municipality will be required to register and formally agree to
4 compliance with set standards and acknowledgment of consequences for non-
5 compliance. It also promotes greater accountability on the part of two key tobacco
6 industry segments having the greatest incentive to directly profit from some form of
7 tobacco tax evasion (e.g. smuggling): merchants located outside MOA acquiring
8 cigarettes and other tobacco products (CTP) tax-exempt, and retail merchants
9 located within MOA that are required and expected to acquire only tax-paid CTP
10 for resale purposes. Treasury had extensive discussions with generally positive
11 feedback from several of the current licensees, but only minimal response from the
12 local retail merchants.

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14 Enhanced administrative enforcement measures contained in this ordinance
15 include:

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17 • Promoting document-based audit trail for transactions involving cigarettes and
18 other tobacco products.
19 • Annual licensing of tobacco retailers for a nominal administrative fee.
20 • Registering businesses to provide more thorough profile upfront, to
21 acknowledge their responsibilities under the Code, and to agree in advance to
22 provide required records documenting an audit trail, if audited by MOA. The
23 registration process will also help promote a more fair, competitive and
24 transparent market in MOA.
25 • Annual registration cycle ensures that MOA is connecting with all tobacco
26 businesses on a regular basis, so that years will not go by while a rogue
27 business exploits a situation
28 • Annual registration of non-MOA businesses applying for privilege of acquiring
29 cigarettes and other tobacco products (CTP) exempt of MOA tax; these
30 businesses are also charged a nominal admin fee to register.
31 • Anchorage-based tobacco retailers must maintain a current MOA tobacco
32 license in order to offer CTP for sale.
33 • Requirement to maintain sufficient records and documents reflecting the
34 source of all CTP acquisitions is extended to local retail merchants and they
35 are also subject to inspection by the Finance Department.
36 • Requires specific business practices to prevent opportunity for tobacco tax
37 evasion— e.g., businesses to pay for tax-exempt CTP with a check or
38 credit/debit card in the name of the business to ensure audit trail exists, and
39 sales receipts must state whether or not tax has been paid on CTP.
40 • Restricts MOA-licensed distributors from selling tax-exempt CTP to a business
41 not appearing on a regularly updated list provided by the Treasury Division.
42 The list of approved non-MOA merchants will be readily available via MOA
43 website and other electronic means.
44 • Prohibits retailer-to-retailer sales (retailers must acquire cigarettes and other
45 tobacco products from an MOA-licensed distributor).

- 1 • Prohibits specific business practices to prevent opportunity for tobacco tax
2 evasion— e.g., no cash and carry sales allowed for tax-exempt CTP; no sales of
3 CTP from a mobile location, and no transport of undocumented CTP within
4 MOA.
- 5 • Bans business operators / individuals who violate the privilege of acquiring tax-
6 exempt CTP from subsequent privilege of acquiring tax-exempt CTP and
7 requires them to remit to the Department all MOA tobacco tax previously
8 avoided.
- 9 • Authorizes MOA to seize tobacco product if person in possession of CTP
10 cannot produce records showing that the product was properly acquired (e.g.,
11 imported into MOA and tax due has been paid, or acquired from MOA-licensed
12 distributor as tax-paid tobacco product).
- 13 • Establishes a de minimis personal use threshold for an individual of
14 appropriate age to legally acquire and personally carry into MOA a small
15 amount of CTP exempt from the licensing requirement or personal tax liability
16 under this chapter (note: this is comparable to the SOA's personal use
17 exemption).

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19 Extensive changes were needed to revise the code to meet the stated objectives.
20 To prevent and/or detect tax evasion schemes, administrative oversight and
21 accountability must apply to the entire local tobacco product industry – wholesale
22 distributors, local retail merchants, and merchant purchasers of tax-exempt CTP.
23 As such, the Treasury Division solicited input from all 22 local businesses currently
24 licensed under the existing AMC Chapter 12.40 as well as all 237 local retail
25 merchants having a tobacco endorsement issued by the State. As described in the
26 related Summary of Economic Effects, additional Municipal resources will be
27 needed to manage the expanded administrative controls contained in this
28 ordinance. The expectation of increased tobacco tax revenues and funding for the
29 necessary additional Municipal costs is incorporated in the 2014 operating budget
30 proposed by Mayor Sullivan.

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32 The new AMC Chapter 12.40 accomplishes the objectives of maximizing
33 realization of all tax revenues due the Municipality and curtailing the risk of tax
34 evasion schemes in a cost-effective manner, while limiting the impact to the
35 taxpaying businesses to expectations and requirements that are achievable and
36 manageable through ordinary and customary business practices.

37 38 **THE ADMINISTRATION RECOMMENDS APPROVAL.**

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40 Prepared by: Daniel Moore, Municipal Treasurer
41 Approved by: Lucinda Mahoney, CFO
42 Concur: Dennis A. Wheeler, Municipal Attorney
43 Concur: George J. Vakalis, Municipal Manager
44 Respectfully submitted: Daniel A. Sullivan, Mayor
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