

**ANCHORAGE, ALASKA**  
**AO No. 2020-89(S), As Amended**

1 **AN ORDINANCE OF THE ANCHORAGE ASSEMBLY ENDING THE EXCLUSION**  
2 **OF ELECTRONIC CIGARETTES AND VAPING DEVICES FROM THE EXCISE**  
3 **TAX ON TOBACCO PRODUCTS, BY AMENDING ANCHORAGE MUNICIPAL**  
4 **CODE CHAPTER 12.40.**

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6 **THE ANCHORAGE ASSEMBLY ORDAINS:**

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8 **Section 1.** Anchorage Municipal Code section 12.40.006 is hereby amended to  
9 read as follows (*the remainder of the section is not affected and therefore not set*  
10 *out*):

11  
12 **12.40.006 - Definitions.**

13  
14 The following words, terms and phrases, when used in this chapter, shall  
15 have the meanings ascribed to them in this section, except where the context  
16 clearly indicates a different meaning:

17 \*\*\*                      \*\*\*                      \*\*\*

18 *Other tobacco products* means:

- 19 1. A cigar;
- 20
- 21 2. A cheroot;
- 22
- 23 3. A stogie;
- 24
- 25 4. A perique;
- 26
- 27 5. Snuff and snuff flour;
- 28
- 29 6. Smoking tobacco, including granulated, plug-cut, crimp-cut and ready-
- 30 rubbed tobacco, and any form of tobacco suitable for smoking in a
- 31 pipe or cigarette;
- 32
- 33 7. Chewing tobacco, including cavendish, twist, plug or scrap tobacco
- 34 and tobacco suitable for chewing; [OR]
- 35
- 36 8. An article or product made wholly or in part of tobacco or a tobacco  
37 substitute or otherwise containing nicotine that is expected or intended  
38 for human consumption, **whether smoked, heated, chewed,**  
39 **absorbed, dissolved, inhaled or ingested by any other means,** but  
40 not including cigarettes or smoking cessation products; or [a  
41 cigarette as defined in this section, a tobacco substitute  
42 prescribed by a licensed physician or a product that has been  
43 approved by the United States Food and Drug Administration for

~~sale as a tobacco use cessation or harm reduction product or for other medical purposes and which is being marketed and sold solely for that approved purpose; or]~~

[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.]

9. An electronic smoking device ~~[, when sold with tobacco or nicotine as part of a packaged unit,]~~ which can be used to deliver aerosolized or vaporized nicotine to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen or e-hookah. An electronic smoking device includes any component, part, or accessory of such a device, whether or not sold separately ~~[when sold as a packaged unit with tobacco or nicotine]~~, and includes any substance intended to be aerosolized or vaporized during the use of the device, whether or not it contains nicotine. An electronic smoking device does not include any battery or battery charger when sold separately or smoking cessation products.

~~[Any noncombustible device 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 any other product name.]~~

\*\*\*                      \*\*\*                      \*\*\*  
*Retailer* means a person in the State of Alaska who is engaged in the business of selling cigarettes or other tobacco products at retail, but does not include a marijuana retail establishment in Alaska licensed under section 10.80.300 or state law engaged in the business of selling electronic smoking devices.

Smoking cessation products means any FDA-approved tobacco cessation drug, device, or a combination product that is intended to help quit tobacco use, as those terms are defined in the Federal Food, Drug and Cosmetic Act (21 USC § 321).

\*\*\*                      \*\*\*                      \*\*\*  
(AO No. 2013-125, § 1, 1-1-14; AO No. 2018-107, § 1, 1-1-19)

Section 2. Anchorage Municipal Code section 12.40.025 is hereby amended to read as follows (the remainder of the section is not affected and therefore not set out):

**12.40.025 - Exemptions.**

...

D. Provided all persons otherwise subject to this chapter comply with its requirements, electronic smoking devices





# MUNICIPALITY OF ANCHORAGE

## Assembly Memorandum

No. AM 500-2020(A)

Meeting Date: October 27, 2020

1 **From: ASSEMBLY MEMBERS LAFRANCE AND CONSTANT**

2  
3 **Subject: AO 2020-89(S): AN ORDINANCE OF THE ANCHORAGE**  
4 **ASSEMBLY ENDING THE EXCLUSION OF ELECTRONIC**  
5 **CIGARETTES AND VAPING DEVICES FROM THE EXCISE TAX**  
6 **ON TOBACCO PRODUCTS, BY AMENDING ANCHORAGE**  
7 **MUNICIPAL CODE CHAPTER 12.40.**  
8

9 The proposed S-version of the ordinance amends the definition of “other tobacco  
10 products” with some changes, but not all, recommended by advocates  
11 representing state branches or chapters of national organizations. The changes  
12 are intended to reflect the model definitions used today by jurisdictions that have  
13 recently enacted legislation to tax e-cigarettes and vaping products, and similar to  
14 Senate Bill 15 passed in 2018 by the Alaska Legislature, an act that updated the  
15 state law to include electronic smoking products and products containing nicotine  
16 in those provisions regulating sales or possession by minors, and business  
17 licensing endorsements to sell cigarettes and tobacco products.  
18

19 The model definition for “electronic smoking device” clarifies that batteries and  
20 chargers sold separately are not taxable. This is because they could be used for  
21 other purposes. We don’t want to inadvertently tax USB chargers or hearing aid  
22 batteries. The definition in this S-version differs from the model definition, on the  
23 advice of counsel and the Treasury Division, by not going as far as levying the tax  
24 on devices, components, parts or accessories which themselves do not contain  
25 tobacco or nicotine when sold separately from the liquid or substances derived  
26 from tobacco or nicotine. These devices and accessories will be subject to the tax  
27 only when they are sold as a packaged unit with tobacco or nicotine. The rationale  
28 is a vaping device, for example, with no nicotine or tobacco included is similar to  
29 cigarette rolling papers or a tobacco pipe and those are currently not subject to the  
30 tax when sold without tobacco. Moreover, vaping devices may be sold by  
31 marijuana retail stores for use with marijuana products, irrelevant to the purpose  
32 of this tax to reduce tobacco and nicotine usage. This S-version definition better  
33 aligns the inclusion of e-cigarettes and vaping products with the current Chapter  
34 12.40 wholesale taxation regime, which was one goal of the ordinance.  
35

36 The definition for “smoking cessation products” includes anything the FDA  
37 approves for tobacco cessation. It does NOT include harm reduction products. This  
38 ordinance is intended to support youth prevention. We do not want to create a  
39 lower-priced tobacco product that serves as an entry point, or training wheels, for  
40 youth tobacco addition. All tobacco use is harmful to youth.

1  
2 Specifically, the substantive changes are:  
3

- 4 ➤ Added clarifying language in paragraph 8. of the “other tobacco products”  
5 definition to encompass newer products such as dissolvable tobacco  
6 lozenges, etc.  
7
- 8 ➤ Replaced language in paragraph 8. of the “other tobacco products” definition  
9 with reference to “smoking cessation products,” a newly defined term in the  
10 S-version that incorporates the federal definition for FDA-approved cessation  
11 products.  
12
- 13 ➤ Replaced the language in paragraph 9. of the “other tobacco products”  
14 definition with a new “electronic smoking device” definition to replace the e-  
15 cigarette definition.  
16
- 17 ➤ Adds a definition for “smoking cessation products” as described above.  
18

19 **We request your support for the S-version of the ordinance.**  
20

21 Prepared by: Assembly Counsel  
22 Respectfully submitted: Suzanne LaFrance, Assembly Member  
23 District 6, South Anchorage, Turnagain Arm, and  
24 Girdwood  
25  
26 Christopher Constant, Assembly Member  
27 District 1, Downtown Anchorage

1 **MUNICIPALITY OF ANCHORAGE**  
2 **Assembly Information Memorandum**

3 **No. AIM 166-2020**

4 Meeting Date: November 4, 2020

5  
6 **FROM: MAYOR**

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8 **SUBJECT: ANCHORAGE HEALTH DEPARTMENT RECOMMENDATION IN**  
9 **SUPPORT OF AO 2020-89(S) ENDING THE EXCLUSION OF**  
10 **ELECTRONIC CIGARETTES AND VAPING DEVICES FROM THE**  
11 **EXCISE TAX ON TOBACCO PRODUCTS, BY AMENDING ANCHORAGE**  
12 **MUNICIPAL CODE CHAPTER 12.40.**  
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15 The Anchorage Health Department respectfully submits the attached recommendation  
16 for the Assembly's consideration regarding AO 2020-89(S) ending the exclusion of  
17 electronic cigarettes and vaping devices from the excise tax on tobacco products.  
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19  
20 Prepared by: DeeAnn Fetko, Anchorage Health Department Deputy  
21 Director

22 Approved by: Heather Harris, Anchorage Health Department Director

23 Concur: William D. Falsey, Municipal Manager

24 Respectfully Submitted: Austin Quinn-Davison, Acting Mayor



## Policy Recommendation

### Excise Tax of Electronic Cigarettes and All Electronic Components of Electronic Smoking Devices

#### **Policy:**

The Anchorage Health Department (AHD) supports ending the exclusion of electronic cigarettes and vaping devices that are used for consumption from the excise tax on tobacco products, and to broaden the scope of products that are to be taxed to include all components of electronic smoking devices, whether or not sold separately, except batteries or chargers.

#### **What is an electronic cigarette (e-cigarette) or vape?**

According to the Centers for Disease Control and Prevention, an E-cigarettes (or vapes) produce an aerosol by heating a liquid that usually contains nicotine. Users inhale this aerosol into their lungs. Bystanders can also breathe in this aerosol when the user exhales into the air. E-cigarettes are known by many different names and are sometimes called "e-cigs," "e-hookahs," "mods," "vape pens," "vapes," "tank systems," and "electronic nicotine delivery systems (ENDS)." (7)

#### **Justification:**

**Increase of Reported Usage:** The use of electronic cigarettes and vaping devices is increasing in Alaska and nationwide; accessibility and the cost of vaping devices contribute to these risky health behaviors. According to the Youth Risk Behavior Study (YRBS), vaping among Alaska high school students is rising. In 2017, 15.7% of Alaska High School students reported use of electronic cigarettes or vaping devices compared to 26% of Alaska high school students reporting vaping use in 2019. (6) The self-report study shows an upward trajectory of electronic cigarette usage among Alaskan youth and may continue to rise without a public health intervention. Nationwide, the use of electronic cigarettes is reported by 37% of US 10th-grade adolescents (2); and it is associated with subsequent initiation of combustible cigarette smoking (3).

**Best Practices:** The Centers for Disease Control and Prevention (CDC), states "Increasing the price of tobacco products is the single most effective way to prevent initiation among nonsmokers and reduce consumption."(5) The CDC lists tobacco taxes as a best practice for tobacco prevention and control because they: help keep kids from starting, encourage adults to quit, and can provide funding for much needed health and cessation programs. Since an electronic cigarette or vaping device cannot be used without its electrical components, inclusion of taxing the electronic components of the device and not just the nicotine-containing liquid supports the CDC best practices model for prevention and to discourage use.

**Cost to Our Healthcare System:** The economic costs of smoking and vaping to Alaska and its citizens is immense. As of November 5, 2019, more than 2,000 vaping-related illnesses and 39 deaths have been reported to the CDC. (1) The State of Alaska Department of Health and Social Services estimated that 697 Alaskans died each year from 2012-2016 from smoking-related diseases, representing an annual average of \$264 million in lost productivity. More Alaskans die each year from the direct effects of smoking tobacco than from suicide, motor vehicle crashes, chronic liver disease and cirrhosis, homicide, and HIV/AIDS combined. Moreover, 2014 estimates indicate that smoking cost Alaska approximately \$575 million in direct medical expenditures. (4)

## **References:**

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- (1) <https://truthinitiative.org/research-resources/emerging-tobacco-products/e-cigarettes-facts-stats-and-regulations#health>, Nov.2020
- (2) Miech RA, Johnston LD, O'Malley PM, et al. Monitoring the Future: National Survey Results on Drug Use, 1975-2015: Secondary School Students. Ann Arbor, MI: Institute for Social Research, University of Michigan; 2016.
- (3) Leventhal AM, Strong DR, Kirkpatrick MG, et al. Association of electronic cigarette use with initiation of combustible tobacco product smoking in early adolescence. JAMA. 2015;314(7):700-707
- (4) Tobacco Prevention and Control Program. *Alaska Tobacco Facts 2018 Update*. Alaska Department of Health and Social Services, 2018.
- (5) Best Practices for Comprehensive Tobacco Control Programs, National Center for Chronic Disease Prevention and Health Promotion, 2014; [https://www.cdc.gov/tobacco/stateandcommunity/best\\_practices/pdfs/2014/comprehensive.pdf](https://www.cdc.gov/tobacco/stateandcommunity/best_practices/pdfs/2014/comprehensive.pdf) ;
- (6) Alaska Department of Health and Social Services. Youth Risk Behavior Surveillance System, State of Alaska; 2019, [http://dhss.alaska.gov/dph/Chronic/Documents/yrbs/2019YRBS\\_Highlights.pdf](http://dhss.alaska.gov/dph/Chronic/Documents/yrbs/2019YRBS_Highlights.pdf)
- (7) About E-Cigarettes, The Centers for Disease Control and Prevention (CDC), 2020; [https://www.cdc.gov/tobacco/basic\\_information/e-cigarettes/about-e-cigarettes.html#what-are-e-cigarettes](https://www.cdc.gov/tobacco/basic_information/e-cigarettes/about-e-cigarettes.html#what-are-e-cigarettes)